1943

SUPREME COURT OF THE UNITED STATES.

No. 113.

THE AMERICAN TRANSPORTATION COMPANY, CLAIMANTS OF THE PROPELLER ORIENTAL, HER TACKLE, &c., APPELLANTS,

v.

JOHN VOLK AND HORATIO N. TURNER, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

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United States of America, Northern District of Illinois.

Pleas in the Circuit Court of the United States of America for the Northern District of Illinois, held at the City of Chicago, in said Northern District of Illinois, before the Hon. John McLean, one of the Justices of the Supreme Court of the United States, and Presiding Judge of the Seventh Circuit, on Saturday the nineteenth day of September, as yet of the July Term of said Court, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-second year.

JOHN VOLK and HORATIO N. TURNER
v.
THE PROPELLER ORIENTAL.

Be it remembered, that heretofore, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the said entitled defendant, by its proctors, filed, in the said Circuit Court, a certified transcript from the record of the District Court of the United States for said Northern District of Illinois, which said transcript is in the words and figures following, to wit:

United States of America, Northern District of Illinois.

Pleas in the District Court of the United States of America for the Northern District of Illinois, in Admiralty, held at the City of Chicago, in the District aforesaid, before the Honorable Thomas Drummond, Judge of said District Court, on Tuesday, the tenth day of March, in the March Term of said Court, in the year of our Lord one thousand eight hundred and fifty-seven, and of our Independence the eighty-first year.

JOHN VOLK and HORATIO N. TURNER
v.
THE PROPELLER ORIENTAL.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-six, came John Volk and Horatio N. Turner, libellants, by Messrs. G. W. and J. A. Thompson, their proctors, and filed in the Clerk's Office of said District Court of the United States for the Northern District of Illinois, at Chicago aforesaid, their libel against the said Propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, and also their stipulation for the payment of costs, which said stipulation and libel are in the words and figures following, to wit:

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" Edward Kelly,	116	61
" Wm. L. Fitch,	117	61
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JOHN VOLK and HORATIO N. TURNER
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THE PROPELLER ORIENTAL.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-six, came John Volk and Horatio N. Turner, libellants, by Messrs. G. W. and J. A. Thompson, their proctors, and filed in the Clerk's Office of said District Court of the United States for the Northern District of Illinois, at Chicago aforesaid, their libel against the said Propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, and also their stipulation for the payment of costs, which said stipulation and libel are in the words and figures following, to wit:

In Admiralty.

To the Honorable Thomas Drummond, Judge of the District Court of the United States for the Northern District of Illinois.

John Volk and Horatio N. Turner, copartners under the firm, name, and style of H. N. Turner & Co., owners of the brig "Nebraska" hereinafter mentioned, exhibit this their libel against the steamboat or propeller Oriental, now lying in the port of Chicago, in the Northern District of Illinois aforesaid, and within the admiralty and maritime jurisdiction of this Honorable Court, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon these libellants do allege and articulately propound as follows, to wit:

First. That the said brig Nebraska was heretofore, to wit, at and before her destruction as hereinafter alleged, a vessel of more than twenty tons of burthen, to wit, of the burthen of two hundred and forty tons or thereabouts; and was, at the time when the cause of action hereinafter mentioned and set forth arose, duly enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between different ports and places in the different States and Territories of the United States, upon the lakes and navigable waters connecting said lakes.

Second. That on the nineteenth day of October, in the year 1856, the aforesaid brig being tight, staunch, and well-manned and provided, sailed from the port of Chicago aforesaid, in ballast, on a voyage to Okonto, in Green Bay, in the State of Wisconsin.

Third. That during said voyage, to wit, some time between nine and ten o'clock P. M. of the said nineteenth day of October, the said brig being then about three miles easterly from Racine, in the said State of Wisconsin, with the wind blowing moderately fresh from the south-southeast, and the course of said brig being then north half east, Allen Soper, the master of said brig, who then had a watch and being on the lookout, descried lights to the starboard, and soon discovered that they were borne by a steamboat or propeller, approaching the said brig in a northeasterly direction, about four miles distant, and then bearing about three points to the starboard of said brig. That as soon as the said Allen Soper, master as aforesaid, had discovered the approach of said steamboat, and when said Oriental was sufficiently near to apprehend a collision, he, the said Soper, ordered the helm to be put to starboard, but immediately thereafter the said Oriental struck said brig, stem on, after the fore rigging on her starboard side; that said propeller thereupon and after said collision kept on her way, without rendering or offering to render said brig or her crew any assistance whatever. That the said brig was immediately after said collision turned in shore, but she

sunk, and became and is a total loss. That the crew of said brig used all proper efforts to keep said brig afloat, and the libellants allege that she could easily have been saved by the assistance of said propeller; and the said brig sunk in Lake Michigan, about two miles south of Milwaukie Harbor.

Fourth. That the said steamboat by which said damage had been done proved to be the propeller Oriental, but these libellants are not informed and cannot state under whose command said Oriental then was, or to what place she was then going. These libellants further allege and show that the said brig, at the time when the "Oriental" was first discovered, carried a light suspended from her pallbit, which remained there until she was struck by the Oriental, and although there was a haze, or slight fog on the water, the said light could easily have been seen, and if she kept a good lookout, must have been seen by her at the distance of three miles, or at least two miles, and in season to have enabled her to give way for the said brig, as she was bound to do, and thereby prevent a collision therewith.

Fifth. That at the time when the danger of a collision between the said vessels was first perceived from the brig, it was impossible for her to get out the way of the said Oriental.

Sixth. That if the said Oriental had had a proper watch on deck at the time of or shortly prior to said collision, she could have easily perceived the danger of such collision, and by putting her helm to starboard pass the brig in safety, or by immediately stopping or reversing her engine, greatly diminish the violence of the blow. But instead of so doing, the said Oriental kept on her way, nor was her speed slackened. And that if said propeller had after said collision rendered the said brig proper assistance, as was her duty, the said brig would have been saved.

Seventh. That at the time of the aforesaid loss of said brig, the libellants were the true and lawful owners of the same, and that said brig Nebraska was of the value of seven thousand dollars, and that by reason of the careless, negligent and unskilful and improper management of the said propeller Oriental, and of the collision thereby occasioned of the said Oriental with said brig, and by her neglect to assist said brig after such collision, the libellants have sustained damage to the amount of nine thousand dollars, or thereabouts, for which they claim reparation in this suit.

Eighth. That all and singular the premises are true.

Wherefore the said libellants pray that process in due form of law may issue against the said propeller, her engine, machinery, boats, tackle, apparel, and furniture, and that this honorable court pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as may be just, and the court is competent to give in the premises.

H. N. TURNER.

G. W. & J. A. THOMPSON,
Proctors for Libellants.

Subscribed and sworn to before me, this 24th day of October, A. D. 1856.

WILLIAM H. WOODBURY,
United States Commissioner.

(Indorsed.) Filed October 24th, 1856.

WM. H. BRADLEY,
Clerk.

District Court of the United States, for the Northern District of Illinois.

Whereas, a libel was filed in this Court, on the twenty-fourth day of October, A. D. 1856, by John Volk and Horatio N. Turner, libellants, against the steamboat Oriental, her engine, machinery, boats, tackle, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellants; and the said libellants and James Keaho, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound in the sum of two hundred and fifty dollars, conditioned that the libellants above-named shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

H. N. TURNER,
JAMES KEAHO.

Taken and acknowledged this 24th day of October, A. D. 1856, before me.

ROBT. RAE,
U. S. Commissioner.

Northern District of Illinois, *ss.*

James Keaho, party to the above stipulation, being duly sworn, deposes and says, that he resides in the Northern District of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities, and besides property exempt by law from execution.

(No signature.)

Sworn this 24th day of October, A. D. 1856, before me.

ROBT. RAE,
U. S. Commissioner.

(Indorsed.) Filed this 24th day of October, A. D. 1856.
WM. H. BRADLEY,
Clerk.

Whereupon, process of monition was issued out of said Clerk's office against the said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, and delivered to the marshal of said Northern District of Illinois to execute, which said monition was in the words and figures following, to wit:

The United States of America, Northern District of Illinois, *ss.*

The United States of America to the Marshal of the Northern District of Illinois, greeting:

Whereas, a libel hath been filed in the District Court of the United States, in and for the Northern District of Illinois, on the 24th day of October, in the year of our Lord one thousand eight hundred and fifty-six, by John Volk and Horatio N. Turner, against the steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made; and that all persons having, or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters in said libel articulately propounded; and that this Court would be pleased to pronounce for the sum of nine thousand dollars, the damages alleged in said libel, besides costs of suit.

You are, therefore, commanded to attach the said steamboat or propeller, her engine, machinery, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this Court respecting the same; and to give due notice, by publication in some daily newspaper printed in the city of Chicago, for fourteen days previous to the day of trial, and by notice posted up in the most public manner, for the space of fourteen days, at or near the place of trial, of such seizure and libel, to all persons claiming the said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, or knowing, or having anything to say why this Court should not pronounce against the same, according to the prayer of the said libel, and that they be and appear before the said Court, to be held in and for the Northern District of Illinois, at the United States Court-room, in the City of Chicago, in said district, on the first Monday in December next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the honorable Thomas Drummond, Judge of the [SEAL.] said Court, this 24th day of October, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the 81st year.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, came the American Transportation Company, claimants of said propeller Oriental, by Messrs. Hoyne, Miller, and Lewis, their proctors, and filed in said Clerk's office, their claim and stipulation in said cause, which said claim and stipulation are in the words and figures following, to wit.

District Court of the United States, for the Northern District of Illinois.

Whereas, a libel was filed in this Court on the twenty-fourth day of October, A. D. 1856, by John Volk and Horatio N. Turner, co-partners, and doing business under the firm name of H. N. Turner & Co., against the propeller Oriental, for the reasons and causes in the said libel mentioned; and whereas, a claim has been filed in the said cause by the American Transportation Company, a corporation created under and by virtue of the laws of the State of New York, and the said American Transportation Company, and James E. Dalliba, its surety, the parties hereto, hereby consenting that in case of default or contumacy, on the part of the said claimant, or its sureties, execution for the sum of five hundred dollars may issue against their goods, chattels, and lands.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is hereby bound in the sum of five hundred dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against the said claimant by the final decree of this Court, or upon an appeal by the Appellate Court.

The American Transportation Company, by J. E. Dalliba, their Attorney in fact.

JAMES E. DALLIBA.

Taken and acknowledged before me this 17th day of November, A. D. 1856.

WM. H. BRADLEY,
Clerk.

Northern District of Illinois, *ss.*

James E. Dalliba, party to the above stipulation, being duly sworn, deposes and says, that he is worth the sum of dollars, over and above all his just debts and liabilities.

Subscribed and sworn before me this day of November, A. D. 1856.

To the Honorable Thomas Drummond, Judge of the District Court of the United States for the Northern District of Illinois:

The American Transportation Company, a corporation created under and by virtue of the laws of the State of New York, owner of the propeller Oriental, her engines and machinery, tackle, apparel and furniture, intervening for its interest in the said propeller Oriental, her engines and machinery, tackle, apparel, and furniture, appears before this Honorable Court, and claim the said propeller, her engines, and machinery, tackle, apparel, and furniture, and states that it, the said American Transportation Company, is the true and bona fide owner thereof, and that no other person is the owner thereof. And thereupon the said claimant prays that this Honorable Court would be pleased to decree a restitution of the same to it, and otherwise right and justice to administrator in the premises.

HOYNE, MILLER, & LEWIS,
Proctors.

(Indorsed.)

Filed November 17th, 1856.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on the 24th day of November, in the year of our Lord one thousand eight hundred and fifty-six, the depositions of George Robertson, Patrick Lawler, James Hayes, Daniel Wood, and James Travis, on the part of the libellants in said cause, were filed in said Clerk's office, by the Commissioner before whom the same were taken, and are in the words and figures following, to wit:

Circuit Court of the United States for the Northern District of Illinois.

JOHN VOLK and HORATIO N. TURNER
v.
The steamboat or propeller ORIENTAL, her engine, machinery, boats, tackle, and furniture, &c.

The deposition of George Robertson, Patrick Lawler, James Hayes, Daniel Wood, and James Travis, taken de bene esse before me, Wil-

liam H. Woodbury, a Commissioner appointed by the Circuit Court of the United States, in and for the said Northern District of Illinois, to be used upon the trial of the above entitled cause.

And the said libellants appeared by Messrs. George W. and John N. Thompson, their counsel, and the respondents by Henry G. Miller, Esq., their counsel.

And the said George Robertson having been by me first examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon, upon examination, depose and say as follows:

Question. What is your occupation?

Answer. I am a sailor.

Ques. Were you on board the brig Nebraska at the time of the collision with the Oriental?

Ans. Yes, I was.

Ques. Where do you reside?

Ans. In Oswego, in the State of New York.

Ques. Are you going to remain in Chicago?

Ans. I am not.

Ques. Where are you going to?

Ans. I intend to go to Buffalo, from there to New York.

Ques. Where were you at the time of the collision?

Ans. At the wheel.

Ques. How long had you been at the wheel?

Ans. About an hour and three quarters.

Ques. How long were you to remain there?

Ans. Two hours.

Ques. Who else was on deck beside you?

Ans. The second mate, and two men before the mast, and the captain.

Ques. What course were your steering?

Ans. North half east.

Ques. What was the state of the weather?

Ans. There was a fine breeze. It was a little hazy, but starlight, so that I could see a vessel's light a mile off.

Ques. At what rate were you sailing?

Ans. I should judge at the rate of five knots an hour.

Ques. Did you see the lights of the Oriental? and how far off were they when you first saw them?

Ans. I did see the lights of the Oriental. I cannot say how far off the steamer was when I first saw her lights. It must have been a mile, and was some ten minutes before she came up.

Ques. Had you any lights, and if yea, where?

Ans. Yes, we had a bright light. It was on the pallbit.

Ques. How much sail had you?

Ans. Foresail, topsail, topgallant-sail, mainsail, gaff topsail, main

staysail, main topmast staysail, jib, and flying jib, and I am not certain whether there was more or not, but these I am certain of.

Ques. What directed your attention to the steamer Oriental?

Ans. There were some clouds, and I could not see to steer by the stars any longer, and I looked for something else to steer by. I looked over the bow, and saw the propeller's light. She was pretty near ahead of us. I was steering by the compass north half east, and kept my eyes on her to see when the vessel swung.

Ques. In what direction was the Oriental going?

Ans. I can't say.

Ques. Over which bow did you see the propeller?

Ans. Over the weather bow, which was the starboard side at that time.

Ques. Can you not tell what the Oriental's course was?

Ans. Could not tell exactly, but she was steering southerly.

Ques. Was that in an opposite direction to you?

Ans. Yes, sir.

Ques. How near was the Oriental when it was apparent that a collision would occur?

Ans. About two hundred yards from us.

Ques. What was the Oriental's bearing then?

Ans. I can't say exactly, but she was headed right on to us.

Ques. Did you alter your course?

Ans. No, not till the officers sung out.

Ques. What officers?

Ans. I don't know which, either the second mate or the captain of our vessel.

Ques. What did the officers sing out?

Ans. Put the helm hard up.

Ques. Will you state what happened then?

Ans. As soon as he sung out put the helm hard up, I did so, then the man on board the propeller sung out to us to put our helm hard up. Our second mate sung out to him (meaning the person on the propeller) to stop going ahead any further. The answer made was that they could not, then the propeller struck us.

Ques. Which way did you put the helm up?

Ans. Hard a starboard.

Ques. Where did the Oriental strike the brig?

Ans. Just abaft the fore rigging, on the starboard side.

Ques. Did you notice whether the Oriental changed her course any from the time you first saw her until she struck? If you answer yea, state particularly when and how.

Ans. I could not say positively, but I think she did change her course. When I first saw her she was right ahead of us, and when she struck she came stem on, and she must have changed her course to have struck in that way. We did not change our course at all.

Ques. Will you explain how the propeller bore from the brig when you first saw her?

Ans. We were steering north half east, and she was about one point to the eastward of us.

Ques. Will you state particularly what happened after the collision?

Ans. After she struck, I let go the wheel, and jumped up on the taffrail to see if the boat was clear. There were some more men aft at the time; I don't know who they were; I know the mate was one of them, and he told me to take the wheel, and the captain ordered the rest to rig the pumps; some of them went to the pumps, and the remainder of the crew took the chain out of the chain-box and carried it to the larboard, so as to keep the vessel listed over, to keep the hole where she struck from getting under water. I don't know what was done after taking out the chain. I stood at the wheel till the brig was nearly full of water. The men's bags and trunks were on deck, and we hove them into the boat, then, *then* I called a man to come and take the wheel, to look after my own clothes. I went to the forecastle and put my foot in, got my foot wet, and saw she was full of water, and went back and took the wheel; in a few minutes after the water came washing over the deck. I left the wheel and jumped into the boat.

Ques. At the time the propeller struck, how long did the propeller remain?

Ans. No longer than she could get clear and leave; in five minutes she was away.

Ques. Did anybody on the propeller offer you any assistance?

Ans. Not that I know of.

Ques. Did anybody on board the propeller ascertain or try to ascertain the damage done to the brig?

Ans. I did know as they did; I heard nothing about it.

Ques. What was your course immediately after the collision?

Ans. Just as soon as she struck us, the captain came and told me to keep her (the brig meaning) as she went north half east.

Ques. Did you not steer for the shore?

(The above question is objected to by the counsel for respondent.)

Ans. Yes, sir, we did steer for the shore.

Ques. How long did you continue to steer your previous course, north half east, before you steered for the shore?

(This question is objected to.)

Ans. I cannot say how long.

Ques. Do you know what the depth of the water was at the place of the accident, and where the brig struck?

(This question is objected to.)

Ans. I do not know what the depth of water was in either place.

Ques. From all the circumstances, do you not think the propeller

was steering for you all the time after you first saw her until the collision?

(Objected to.)

Ans. I do not know that she was steering for us all the time, but I should think she was by her running into us.

Cross-Examination by Mr. Miller.

Ques. How old are you?

Ans. Twenty-one years and some months.

Ques. How long have you been sailing?

Ans. Six years.

Ques. Where was the brig bound for, and for what purpose?

Ans. For Oconto in Green Bay, for a load of lumber.

Ques. Where did she sail from?

Ans. From Chicago.

Ques. Did she stop at Racine?

Ans. No, sir.

Ques. In passing Racine, which side of the reef did she go, in front of the Piers, the east or west side?

Ans. I do not know. I never was there to see the reef. I don't know where the reef is.

Ques. Have you sailed long on Lake Michigan?

Ans. No, sir.

Ques. How long have you sailed on Lake Michigan?

Ans. I have been sailing between Buffalo and Chicago this last summer, and one trip last fall.

Ques. Was there a white light on the brig at the time you first saw the lights of the Oriental?

Ans. Yes, sir.

Ques. Do you know how far south of the Point north of Racine you were at the time of the collision?

Ans. I do not.

Ques. Do you know where the Point is?

Ans. No, sir.

Ques. When the clouds passed over the stars, and you could not see them to steer by, did you look to the lights of the propeller to assist you in steering?

Ans. I did, after I found the lights.

Ques. Did you shape the course of the brig to pass to the eastward or westward of the lights?

Ans. I did not shape the course. I steered the course given by the captain.

Ques. As you were then steering, on which side of the brig were the lights of the propeller?

Ans. On the east or starboard side.

Ques. If the course of neither the brig nor propeller had been

changed, on which side of the propeller would you have passed, the east or the west side?

Ans. If the course had not been changed, we would have went on the west side of the propeller.

Ques. Before the collision, did you hear the propeller's bell ring?

Ans. I did not.

Ques. At the time of the collision are you sure that the captain was on deck?

Ans. Yes, sir. Before she struck us he came and looked into the binnacle.

Ques. Is that all you saw of him before the collision?

Ans. After he left the binnacle he went away, and I saw him talking with the second mate.

Ques. Who else was on deck at that time?

Ans. Two men before the mast. I saw them.

Ques. How far were you from the propeller when the officers told you to put the helm hard up?

Ans. I should think we were somewhere near two hundred yards off.

Ques. Had you apprehended a collision would take place before that time?

Ans. No, sir.

Ques. Had you then noticed any change in the course of the propeller?

Ans. Not until they sung out.

Ques. When you saw that a collision was inevitable, were you not excited, and do you remember everything that took place afterwards?

Ans. I remember what I have told. I was a little excited when she struck us.

Ques. When you saw that a collision was inevitable, did it not excite or alarm you?

Ans. When I saw she was coming on to us I was excited.

Ques. Which way did you turn the helm?

Ans. I turned the wheel a port, and put the helm hard a starboard.

Ques. How far were you from the propeller when you did this?

Ans. About two hundred yards.

Ques. What means have you for knowing the distance from the propeller?

Ans. I saw the propeller plain, and I was on the vessel, and thought that was about the distance.

Ques. Have you any means of knowing how fast the propeller was then going?

Ans. I have not any means of knowing.

Ques. Do you know how far you were then from the shore?

Ans. I do not.

Ques. Was the vessel loaded?

Ans. No, sir.
Ques. How many men in all had she on board of her?
Ans. Eleven.
Ques. How many lights had she out?
Ans. I saw but one.

Direct Examination resumed.

Ques. On what day did you leave Chicago, and when did the collision take place?
Ans. We left Chicago on a week ago last Sunday, and the collision took place between half-past nine and ten o'clock the same evening.
Ques. From your knowledge and experience as a sailor, do you think a collision could have been avoided by the brig, and if so, how?
(Counsel for respondent objects to this question.)
Ans. I do not think it could.
Ques. From your knowledge and experience as a sailor, do you think the brig could have been saved after the collision, and how?
(Objected to.)
Ans. I do not think she could have been saved.
Ques. When the captain looked into the binnacle did he speak to you, and what did he say?
Ans. He said nothing.
Ques. When the men aboard the propeller sung out to put the helm hard up, do you know who they were speaking to, and if you answer they meant you, state how you know that?
(Objected to.)
Ans. I did not mind them, but when our own officers sung out, I put the helm hard up; they sung out directly after those in the propeller did.
Ques. Were you so much excited that you could not hear any command that may have been given?
(Objected to.)
Ans. No, sir, I was not.

GEORGE ROBERTSON.

WILLIAM H. WOODBURY,
United States Commissioner.

And the said Patrick Lawler, having been by me first examined, and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon, upon examination, testify as follows:
Ques. What is your occupation?
Ans. I am a sailor.
Ques. Were you aboard the brig Nebraska, and when?
Ans. I was, a week ago Sunday last.
Ques. Where was that?

Ans. At Chicago.

Ques. Were you aboard the brig at the time of the collision with the Oriental?

Ans. Yes, I was aboard of her at the time of the collision.

Ques. When did that collision take place?

Ans. Sunday evening between nine and ten o'clock. I think it was the same day.

Ques. Where were you at that time?

Ans. I was in bed.

Ques. When did you get up?

Ans. Directly after we struck.

Ques. What did you do then?

Ans. I got up and looked to see where she was struck, and was standing round there, and the captain said to rig the pumps. Two of us took hold of the pumps. When we got tired, we let others take it. After, he told us to get the anchor chain out of the chain-box, and haul it down on the lee side of the vessel. We did so. After that I took hold of the pumps again; then we got some pails and went to baling out of the hold. When we got tired of baling, then we pumped, and so we changed about. After that we went down to the forecastle to get our things out; took them aft and put them in the boat. After that we went back to the pumps, and went to work again. We pumped a minute or two, and the first mate came and told us to stop. We went aft and hauled the boat up alongside of the vessel; the captain then told us to get into it. We pulled around the vessel, and went up and stowed or furled the sails. We came down and got into the boat, and went off. We took the light off the pall-bit and put it in the boat.

Ques. When you first came on deck, did you see the propeller?

Ans. Yes, I saw her after she got away from us.

Ques. Where were you struck?

Ans. Five feet past the fore rigging.

Ques. How was the brig then sailing?

(Objected to.)

Ans. I think before the wind.

Ques. What was the state of the weather?

Ans. I don't know much about the weather; I did not take notice.

Ques. How far was the propeller when you saw it?

Ans. I should think she was about the length of our vessel from us.

Ques. In what direction?

Ans. She appeared to lay the same way she came into us, stem on.

Ques. Where was she then going?

Ans. Across our stem.

Ques. Could you see the propeller distinctly?

Ans. I could not tell the difference between a propeller and a

steamboat, as I came out of the forecastle; I just looked at her, and that was all.

Ques. Who was at the helm?

Ans. I think George Roberts was at the helm, for all the others I saw working around on the deck.

Ques. Were you asleep in your berth?

Ans. I was.

Ques. How long after the collision was it when you left the brig?

Ans. I should think it was about two hours and a half, or three hours.

Ques. How far had the brig gone from the Point, when the collision took place?

Ans. I couldn't say how far she went.

Ques. What was the condition of the brig at the time you left her?

Ans. She was under water when we left her, within about two feet of her larboard rail.

Ques. Did you see the brig go down?

Ans. Yes.

Ques. Was there any sounding made to your knowledge after the collision, and if so, by whom, how often, and where?

Ans. Not that I know of.

Ques. When was the light taken from the pallbit, and was it burning?

(Objected to.)

Ans. It was taken off after the vessel went down.

PATRICK LAWLER.

WILLIAM H. WOODBURY,
U. S. Commissioner.

And the said James Hayes, having been by me first cautioned and examined and sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon, upon examination, depose and say as follows:

Ques. What is your name, age, occupation, and where do you reside?

Ans. My name is James Hayes, am turned twenty-two years, and am a sailor, and reside at present in Chicago.

Ques. Do you expect to be here this winter?

Ans. No, but expect to be here in the spring.

Ques. Are you going away?

Ans. No, sir, not at present.

Ques. How long do you intend to remain here?

Ans. Until I get a vessel; perhaps a day, perhaps more.

Ques. Were you on the brig Nebraska on her last trip?

Ans. Yes, sir, I was.

Ques. When did the Nebraska sail on her last trip?

Ans. On the nineteenth of this month.

Ques. Where were you, and what were you doing at the time of the collision on that day?

(Question objected.)

Ans. When the accident happened I was standing on the forecastle door; I was doing nothing.

Ques. Where were you, and what were you doing immediately before the collision?

Ans. Before the collision I was turned in.

Ques. Were you asleep?

Ans. No, I was not asleep.

Ques. What did you get up for? State what happened.

Ans. I got up to hear what was the matter. I heard the shouts as soon as I came up. I saw the propeller running into the vessel while I was in the scuttleway, after she struck. She dropped astern and tore our top and lift off the main boom, and immediately after she got clear of us and laid his course for the land, and we saw no more of the propeller. We used all the efforts we could to keep the vessel empty of water. I saw the captain and the mate go down in the hold towards where she got damaged with a lamp, to see if they would stop the leak; it was all in vain. Then we manned the pumps, and every man who was not at the pumps got a bucket and baled out of the hold as well as he could. We saw that it was no use; it was gaining on us, and we lay in for the land. We tried to make Milwaukie, and that was all in vain. We got her in pretty near the land and she sunk with us. After she sunk we went up and furled the sails. The captain and the crew did all they could for her safety. We had to get into the boat, when we could do nothing with her, to save our own lives, and so we left her, and we rowed the boat to Milwaukie.

Ques. What were the shouts that you heard before coming on deck, and who shouted?

Ans. The shouts I heard were "God damn you, stop her;" that was the second mate. I heard a voice at a distance cry out, "I can't;" with that I turned out *out* of my bunk.

Ques. What side of the brig did you see the propeller, and how did she bear upon the brig?

Ans. I saw the propeller coming on the starboard side of the brig, to the best of my opinion. She came on from the east or northeast.

Ques. Did you take notice how the weather was?

Ans. It was a fine clear night, and about a six-knot breeze, and the wind was about south by west, to the best of my opinion.

Ques. Who did you see on deck, and who was *was* at the wheel at that time?

Ans. I saw the second mate on deck, and saw Roberts at the wheel. When I went aft I saw the captain, first mate, and all the watch.

Ques. Will you state what was done by either vessel to get clear after the collision?

Ans. We were on our square yards, running before the wind, and could do nothing; the propeller did nothing.

Ques. Which side was the main upon, larboard or starboard, before the collision?

Ans. It was on the larboard side.

Ques. Did the propeller stop before the collision?

Ans. Not to my knowledge.

Ques. What was the damage done to the brig?

Ans. The damage the propeller did, was to drive a hole in her side, on her starboard side, about five feet aft of the forerigging, very near amidships. I think the hole was about six inches in width, and perhaps three feet in length, to the best of my opinion. I could not tell the damage done under the water.

Ques. Did you go and look at it?

Ans. I went and looked over the side at the damage.

Ques. Do you know where you were at that time?

Ans. To the best of my opinion, we were about twelve miles in on the lake, a little to the north of Racine.

Ques. How long was it after the collision before the vessel sunk?

Ans. I think, to the best of my opinion, about two hours.

Ques. Do you know whether any sounding was made, and if so, how often, and where?

Ans. I saw the lead in the captain's hand. I don't know how often he sounded, we were at the pumps.

Ques. Were the shouts before mentioned the only ones you heard at or before the collision?

Ans. They were all I heard.

Ques. Was any assistance offered you from or by the propeller? (Objected to.)

Ans. Not the slightest assistance, they never said good night.

Cross-Examination.

Ques. How long had you been in the bunk at the time you heard the shouts you have spoken of?

Ans. Two hours lacking twenty minutes; the accident happened at twenty minutes of ten.

Ques. Do you know what the course of the propeller was at the time of the collision?

Ans. I do not know.

Ques. Were you in your bunk at the time the brig passed Racine? (Objected to.)

Ans. I can't say exactly, for I could not see a Racine light.

Ques. Do you know when you passed Racine?

Ans. No.

Ques. You do not know, then, how long you had passed Racine at the time of the collision?

Ans. No, sir.

Ques. Nor how far you had passed Racine?

Ans. No, sir.

Ques. How long was it before the collision that you left the deck to go below?

Ans. Two hours lacking twenty minutes.

Ques. Did you leave the wheel?

Ans. Yes, I was relieved from the wheel.

Ques. How fast were you sailing when you went below?

Ans. I think about six knots an hour.

Ques. On what course were you sailing?

Ans. I was steering north by east; that was the course I got.

Ques. Who succeeded you at the wheel?

Ans. George Roberts.

Ques. What course did you give him?

Ans. I gave him north by east.

Direct Examination resumed.

Ques. When you said you don't know what the course of the propeller was, did you mean to say that you don't know what her course was at or before the collision?

(Objected to.)

Ans. I meant to say I didn't know what her course was at any time.

JAMES HAYES.

WILLIAM H. WOODBURY,
U. S. Commissioner.

And the said Daniel Wood having been by me examined, and duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon upon examination depose, testify, and say as follows:

Ques. What is your name, age, and occupation, and where do you reside?

Ans. Daniel Wood is my name, age is thirty-six, am a sailor. I reside in St. Johns, Newfoundland.

Ques. How long will you stay in Chicago, and will you be here this winter?

Ans. I cannot tell how long I shall stay in Chicago; maybe a week or less. I may and may not be here this winter. I usually spend my winter at the South somewhere.

Ques. Do you intend to go away?

Ans. I do intend to go away.

Ques. Were you aboard the brig Nebraska on her last trip, and if so, in what capacity?

Ans. I was. I was first mate.

Ques. When did she leave Chicago on that trip?

Ans. She left on the nineteenth of October inst., at about one or two o'clock in the afternoon.

Ques. How many men composed the crew?

Ans. Six men before the mast, two mates, captain, and cook.

Ques. Had you any passengers?

Ans. Yes, one man; I don't know his name.

Ques. Where were you going?

Ans. To Oconto, Green Bay.

Ques. How large a vessel was the Nebraska, and who are her owners?

Ans. I cannot say exactly, perhaps about three hundred tons. Mr. Turner is the only owner I know; he is present.

Ques. Do you know what the Nebraska was worth, and if so, how much?

Ans. I couldn't say how much she was worth.

Ques. Was she a new or an old vessel? Was she staunch and seaworthy?

(Objected to.)

Ans. Cannot say how old she was. She was a good vessel and seaworthy.

Ques. Did she leak any?

Ans. No, sir, when we left here, she did not.

Ques. What was the state of the weather and wind during the day you left Chicago?

Ans. Fine, clear weather all day; the wind was as near as I could judge southeast or south-southeast.

Ques. Where were you, and what were you doing at the time of her collision with the propeller Oriental?

Ans. I had just got my head out of the companion-way, and just had the pleasure of seeing her strike.

Ques. What do you mean, if anything, by saying you had the pleasure of seeing her strike?

Ans. I mean nothing by so speaking.

Ques. How long had you been abed before that collision, and were you asleep at the time?

Ans. I was in bed somewhere a little over an hour; I was asleep, but the cook roused me.

Ques. State what you saw when you got on deck, and what happened.

Ans. I saw right forward amidship to where she struck, and put my hand on the rail and looked down to see where she was damaged. I took notice that from the water's edge to the covering board, she was stove right in. I went down after that to get a lamp, to look again a second time. I looked again over the side with the lamp, and saw she was stove in, just as I said before. I went down into

the hold and examined her there; saw the ceiling was all smashed in, and the water coming in; came upon deck, mustered all the men, and kept them at work pumping and baling out of the hold. Then the captain told me to have the men get the chain out of the chain-box and haul it on the larboard side, both chains, to list the vessel over to keep the damaged side out of the water. I went and got the water-barrel and put it on the larboard side, and baled it full of water; after that we all kept pumping as hard as we could, every one doing his duty, and I among the crowd. The captain then said, Get the big anchors over the bow; from there we went to work at the pumps again. She was gaining water then pretty smart on us. Once in a while we had to take off one or two men to work the braces, as we were hauled up for the land. To the best of my opinion, she was half full of water when the captain told me to get the boat ready. I told him the boat was all ready. He told me to lower it away into the water. I went along and looked into the hold again, and saw the vessel was nearly full of water; I took a round turn round the deck to see if the men were at work. I came along again and told the captain, She will be full in five minutes. I came again forward, and took a drink out of the hold. She was very near full. We, all hands, got aft, some on the house, some on the deck, and some in the boats. We had topsail and jib on. We got in the boat, and in about two or three minutes she settled on the bottom. We then furled all the sails, took off the signal light, the bright light, and pulled for Milwaukie.

Ques. Can you state what the wind was at the time of the collision?

Ans. As near as I can tell, it was south-southeast.

Ques. What was the course of the brig then?

Ans. North half east.

Ques. Do you know what the course of the propeller was?

Ans. I do not.

Ques. From what direction from you did she come?

Ans. From the north and eastward, I think, but cannot say certain.

Ques. At what rate was the propeller going, and had she any sails up?

Ans. I thought from the shock, when she struck us, she was going three or four knots an hour. I don't know whether she had any sail up.

Ques. How long have you been a sailor?

Ans. Nineteen or twenty years.

Ques. How long have you acted as mate?

Ans. Two years, this season and last season on the lakes.

Ques. Are you familiar with the rules of navigating vessels on the lakes?

Ans. Yes, as far as compass, wind, and weather, and courses go.

Ques. Do you know what the rule is when a sail vessel and steamboat meet from an opposite direction, and if you say yea, state the rule?

Ans. Yes; running either up or down the lake, with a fair wind, steering a due course to keep in a due course.

Ques. Will you state how much sail the brig carried at the time of the collision?

Ans. To the best of my opinion, mainsail, main staysail, main topmast staysail, foresail, foretopsail, and topgallant sail, jib and flying jib.

Ques. What position was the brig in at the time of the collision?

Ans. With her square yards, going before the wind.

Ques. How had the brig to steer, according to the rule, meeting the Oriental as she did, before the collision?

Ans. About north and by east, or north half east, according to the wind sometimes.

Ques. Do you know what wind there was at the time of the collision?

Ans. As near as I can tell, south-southeast.

Ques. Could the brig avoid a collision, and if so, state how?

Ans. She could not, to my knowledge.

Ques. Did you hear any words spoken from the propeller, and if so, state them?

Ans. I heard them singing out, but don't know what they said; I don't mind.

Ques. What do you mean by saying you don't mind?

Ans. I mean I don't know what they said. I was looking after something else at the time.

Ques. Were you offered any assistance, after the collision, by the propeller?

Ans. I heard no words of assistance whatever.

Ques. How long did the propeller remain after the collision?

Ans. About five or ten minutes, as near as I *I* can guess.

Ques. Did any one on board the propeller ascertain or endeavor to ascertain your damage or condition?

(Objected to.)

Ans. No, sir; no one.

Ques. How far could you see a light at that time?

Ans. About four or five miles, as near as I can judge.

Ques. Had you any light; if so, state what and where?

Ans. Yes; it was on the pallbit, a signal light; it was a bright light, or clear light, as you might call it.

Ques. Were any soundings made, to your knowledge?

Ans. No, not to my knowledge, at the time of the collision. After that, maybe a few minutes, the captain hove the lead, and found no bottom with ten fathom line out.

Ques. State, if you can, as near as possible, where the collision took place?

Ans. As near as I can state, maybe off Oak Creek, between Racine and Milwaukie Point, five to six, perhaps seven miles from shore.

Ques. How long after the collision did the vessel sink?

Ans. Somewhere about half past twelve, or nearly one o'clock.

Ques. Do you know whether the propeller had stopped before the collision?

Ans. All I can say is, when I got my head out of the companion-way the propeller was coming full butt right into us.

Ques. Did she come stem on?

(Objected to.)

Ans. Right stem on.

Ques. Could the brig have been saved by the assistance of the propeller?

(Objected to.)

Ans. Yes, by towing us into Racine, or the nearest port.

Cross-Examination.

Ques. How long had you been in bed previous to the collision?

Ans. A little over an hour.

Ques. Were you in bed at the time the vessel passed Racine?

(Objected to.)

Ans. Yes.

Ques. Then you do not know when she passed Racine, do you?

(Objected to.)

Ans. No, I do not exactly.

Ques. You do not know what course she was on after she passed Racine, and before the collision, do you?

Ans. I allowed she was steering north half east, or north and by east, a little before the collision.

Ques. How do you know, if you were in bed?

(Objected to.)

Ans. Before I went to bed, before eight o'clock, we were steering about north half east, or north by east, I cannot exactly remember.

Ques. Is this the reason you have for saying the course of the vessel at the time of the collision was north half east, or north by east?

(Objected to.)

Ans. On account of the vessel going square yards before the wind, I did not think the course was altered.

Ques. Might she not have been on some other course, or a slightly different course, and still be running with her square yards before the wind?

(Objected to.)

Ans. Not to my knowledge; she might have been a very little, on account of jibing her main boom, perhaps a half or quarter of a point.

Ques. If she had been running directly before the wind, could she not run with her yards square?

Ans. With the wind dead aft, she would run with her yards square, but it would once in a while calm her square sails.

Ques. Now if the wind was south-southeast, and dead aft, what would be the course of the vessel?

(Question objected to.)

Ans. North-northwest.

Ques. How far from Racine were you at eight o'clock, and which side, north or south?

Ans. We were five or six miles, as near as I can guess, south of it.

Ques. How fast were you then going?

Ans. Five or six knots an hour; we had no log on board, so I have to judge of it.

Ques. Do you say the collision took place the moment you put your head out of the companion-way?

Ans. Just as I got my head out.

Ques. On what course did you put the vessel immediately after the collision?

Ans. I know nothing of it; the captain attended to the courses.

Ques. How long did you run after the collision before the captain made any soundings?

(Objected to.)

Ans. Three or four minutes, more or less.

Ques. Did you or the captain make the soundings?

Ans. The captain did.

Ques. Is it from what the captain told you, that you say he threw a ten-fathom line and found no bottom?

Ans. Yes, it is from what he told me.

Ques. Did you try to run the vessel to Milwaukie immediately after the collision?

(Objected to.)

Ans. Yes, sir, I guess the captain did.

Ques. When you left the vessel, how far had she sunk into the water?

Ans. The starboard side and rail was all under water.

Ques. How was it with the larboard side?

Ans. The water was just washing over her larboard rail at midships, and forward and aft were a little out of water.

Ques. How far was she from the shore?

Ans. Nearly three or four hundred yards when she sunk.

Ques. Do you know the course the propeller was on at the time of the collision?

Ans. I don't know, I couldn't tell.

Ques. Do you know what the rate of her speed was?

Ans. I couldn't say exact; three or four knots, may be more or less.

Ques. How many miles did you go from the point where the collision took place before the vessel sunk?

Ans. Might have gone twelve or thirteen, more or less, I couldn't say.

Ques. What time did you go to bed before the collision?

Ans. About nine, maybe after nine; I did not take notice.

Direct Examination resumed.

Ques. Was the wind dead aft at the time of the collision?

(Objected to.)

Ans. It wasn't exactly dead aft, it was about south-southeast.

Ques. Is it customary to carry a log on the Lake?

Ans. No, sir.

Ques. Is it customary for the person heaving the lead to give sounding?

(Objected to.)

Ans. It is customary to give the soundings when the bottom is struck.

DANIEL WOODS.

WILLIAM H. WOODBURY,
U. S. Commissioner.

And the said James Travis, having been by me first carefully examined, and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon upon examination, depose, testify, and say as follows:

Ques. What is your name, age, and occupation, and where do you reside?

Ans. My name is James Travis, am seventeen years old, am sailor, and reside at Canada West.

Ques. Will you stay here, and if you say nay, state where and when you intend to go?

Ans. I don't think I will stay here; I intend to go South in a month from now.

Ques. Were you on the brig Nebraska on her last trip?

Ans. Yes, sir.

Ques. From where and when did she sail?

Ans. She sailed from Chicago on the nineteenth of this month, about two o'clock in the afternoon.

Ques. Where were you, and what were you doing about the brig at the time of her collision with the Oriental?

Ans. I was down forward; just got on my boots and coming on deck.

Ques. Had you been asleep at the time of the collision?

Ans. No, I was not asleep at the time of the collision; I had been before.

Ques. Will you state particularly what happened from your own knowledge?

Ans. I was woke up by the singing out on deck. I got out of my bed, put on my boots and cap, and went on deck. When I got on deck, I saw the propeller just off the starboard davy. The captain sung out for us to get down the weather brace; it was carried away by the propeller. We got that down, and he sung out for us to go aft and get in the mainsail, and get the lift on the main boom; then he sung out for us to try the pumps; then he said, who could not get at the pumps to get their buckets and go to baling out of the hold; then he sent one of us down to fill the buckets in the hold; then the mate told a couple of us to get the chains out of the box, and get them on the larboard side, to keep the damaged place out of the water. The captain told the mate to get the water-cask on the larboard side and fill it. Then he told us to go to work baling and pumping again; then he told me and the mate to go and cut away the boat. After we got the boat down, he told me I might go below, and throw some things in the boat, the things were all afloat down forward; then he told us to go to work at the pumps and baling. We pumped away till the water rushed over the deck, and then some of us got in the boat and some on the cabin; after *after* she sunk, he told us to clew up the topsail, and hand down the jib; then he told us to furl the sails. After we got the sails furled, I took the signal-lamp off the pallbits and put it in the boat, and we rowed to Milwaukie.

Ques. Do you know whether it was clear or hazy at the time of the collision?

Ans. It was a nice clear night; you could see the stars.

Ques. How far could you see a light?

Ans. I should think I could see a light about five miles.

Ques. What sort of a light did you carry on the brig, and where was it?

Ans. We carried a bright light; it was on the pallbit.

Ques. How long have you been a sailor?

Ans. About four years.

Ques. Did you see the collision take place?

Ans. I did not see it till after the propeller was off the starboard davy.

Ques. Did you take notice what wind you had at the time of the collision?

Ans. I couldn't say certain; I think about south and by east, or south-southeast.

Ques. How long after the collision did the brig sink?

Ans. About two hours.

Ques. What watch were you in?

Ans. In the larboard watch.

Ques. Which watch was on deck at the time of the collision?

Ans. The starboard watch.

Ques. How long did the propeller remain after the collision?

Ans. I don't know; I don't think she was stopped at all.

Ques. Do you know whether any assistance was offered to the vessel by any one on board the propeller?

Ans. I don't think there was; there was none to my knowledge.

Ques. Do you know whether any one on board the propeller ascertained, or endeavored to ascertain the damage or condition of the brig after the collision?

Ans. No, sir; there was not to my knowledge.

Ques. Could the vessel have been saved by the assistance of the propeller?

(Objected to.)

Ans. I should say she could have been saved by the propeller taking us in tow for Racine, or the nearest port.

Ques. What were the names of the men in the larboard watch?

Ans. I don't know the names of any of them.

Ques. What watch was the mate in?

Ans. He was in the larboard watch.

Ques. What were the names of the men in the starboard watch?

Ans. I know but one, and that was Roberts.

Ques. Where was he at the time of the collision?

Ans. He was at the wheel, I believe.

Cross-Examination.

Ques. Did you see Roberts at the time of the collision?

Ans. No, I did not take notice.

Ques. How long had you been sailing on the schooner Nebraska?

Ans. I was only on her four days.

Ques. How long was Roberts on her?

Ans. He shipped on the day we left Chicago.

Ques. What time did you go to bed?

Ans. It was nearly half after eight.

Ques. How far were you south of Racine then?

Ans. About six or seven miles south; I could not say for certain.

Ques. Were you sailing any faster then, than when you got under way from Chicago?

Ans. No; I don't think we were; I don't think we were sailing as fast.

Ques. Had there been any change in the strength of the wind?

Ans. Yes; I don't think it had been as heavy as when we left Chicago.

Ques. Did you particularly notice the strength of the wind at the time of the collision?

Ans. No; I didn't take particular notice of it.

Ques. Did you when you went to bed?

Ans. Yes; I took some notice of it; I didn't take particular notice of it.

Ques. Do you know in what course the vessel was put immediately after the collision?

Ans. No; I don't know what course she was on.

Direct Examination resumed.

Ques. Do you know whether any soundings were made at or about the time of the collision?

Ans. I cannot say.

JAMES TRAVERS.

WM. H. WOODBURY,
U. S. Commissioner.

United States of America, Northern District of Illinois, *ss.*

I, William H. Woodbury, a commissioner appointed by the Circuit Court of the United States, in and for the Northern District of Illinois, in the seventh circuit, under and by virtue of the Acts of Congress, do hereby certify that the reason for taking of the foregoing depositions, and the fact is, that the witnesses reside more than one hundred miles from the place where said trial is to be had, and are about to depart from said circuit and the jurisdiction of said Court.

I further certify, that due notification of the time and place of taking said depositions was made out and served upon the agents of respondent, which said notice is hereto annexed.

I further certify, that on the twenty-ninth and thirtieth days of October, A. D. 1856, I was attended by Henry G. Miller, Esq., of counsel for the respondent, and by the witnesses, who were of sound mind and lawful age; and the witnesses having been by me carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, their depositions were by me reduced to writing in the presence of the witnesses, who subscribed the same in my presence.

I further certify, that I am not of counsel or attorney for either of the parties in the said caption named, or in any way interested in the event of said cause.

In witness whereof I have subscribed my name, and affixed my seal, this thirtieth day of October, A. D. 1856.

[SEAL.]

WM. H. WOODBURY,
United States Commissioner, Northern District of Illinois.

Circuit Court of the United States, for the Northern District of Illinois.

JOHN VOLK and HORATIO N. TURNER,
v.
THE STEAMBOAT or PROPELLER ORIENTAL, her engine, machinery, boats, tackle, and furniture, &c.

Sir: You will please take notice, that George Roberts, James Hayes, Patrick Lawler, John Limb, Dan and Jim, witnesses whose testimony is necessary in this cause, and who are about to depart from the said district, will be examined *de bene esse*, on the part of the libellants herein, before me, a commissioner duly appointed by the Circuit Court of the United States, for the Northern District of Illinois, at my office, number 48 Clark Street, in the City of Chicago, in said Northern District of Illinois, on the twenty-ninth day of October, A. D. 1856, at nine o'clock in the forenoon of said day, at which time and place you are hereby notified to be present, and put interrogations if you shall think fit.

WILLIAM H. WOODBURY,
U. S. Commissioner, Nor. Dist. Illinois.

Dated Chicago, October 28th, A. D. 1856.

To George E. Daliba, Esq., agent of the American Transportation Company, or to any of the officers of said Company.

(Indorsed.) Filed November 24th, 1856.

WM. H. BRADLEY,
Clerk.

Opened for defendant's proctor, Feb. 6th, 1857.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on the twenty-seventh day of November, in the year last aforesaid, came the said American Transportation Company, claimants and respondents, by Messrs. Hoyne, Miller, and Lewis, their proctors, and filed in said clerk's office their answer to the libel heretofore filed herein, which said answer is in the words and figures following, to wit:

In Admiralty.

To the Hon. Thomas Drummond, Judge of the District Court of the United States for the Northern District of Illinois.

The answer of the American Transportation Company, a corporation created by and duly incorporated under the laws of the State of New York, intervening for their interest in the propeller Oriental,

to the libel of John Volk and Horatio N. Turner, copartners, and doing business under the firm name of H. N. Turner & Co., answers and alleges as follows:

First. That this respondent is ignorant of the matters contained in the first and second articles of said libel, and as to the matters contained in the third, fourth, fifth, sixth, seventh, and eighth articles of said libel, this respondent has no personal knowledge, but has understood and believes that the same are in a great part falsely alleged, and that the truth is as hereinafter alleged.

Second. That, on the evening of the nineteenth day of October last past, the said propeller being in good order and well and sufficiently equipped and manned, was proceeding on her voyage from Buffalo to Chicago, having stopped at Milwaukie for the purpose of discharging a portion of her freight there. That she had a proper lookout and watch to guard against the danger of collision, and was furnished with suitable lights, and was carrying the same in accordance with the Laws of Congress and agreeably to the rules and regulations prescribed for the navigation of steamboats, vessels, &c., on the northern and northwestern lakes. That, at the time of the collision hereinafter mentioned, and prior thereto, the atmosphere was somewhat obscured by a fog, though the lights of said propeller could be seen at a distance of two and a half or three miles. That after said propeller had passed Racine Point, which is about four miles north of Racine, and while she was on her course south-southwest, heading directly for the Racine Lights and making for the Racine Piers with a view to stopping and discharging a part of her cargo there, the master of said propeller, who was then on her pilot-house, discovered the light of a vessel, which afterwards proved to be the brig Nebraska, to the eastward of said propeller, and three points on her larboard bow, and that said brig was then passing down the lake with a clear wind on the larboard side of said propeller. That at the time said light was discovered, said brig was about one mile or one mile and a half distant from said propeller, and that said propeller was on the Racine side of said Racine Point, and about one-half a mile distant therefrom, and that from that time until the collision hereinafter mentioned, the said propeller had three men at her wheel; that her master and her mates were on deck, together with a portion of her deck hands; that she continued as far in shore as possible, and was making directly for the Racine Lights, on a course south-southwest, and was running in three and one-half fathoms water at a very slow rate, with her engine-check down. That said propeller continued on her course, and said brig was apparently passing down the lake on her larboard side, and that it was not until said brig approached so near that her sails could be seen, that the master or any one on board of said propeller discovered that she was approaching too near, or that it was possible for any collision to take place; and that as soon as it became apparent that said brig was nearing the propeller,

the propeller blew her whistle, and her engine was immediately reversed, and she commenced backing, for the purpose of avoiding and keeping out of the way of said brig and to prevent any collision with her. That said whistle could have been heard at a distance of at least one mile, and that said brig was then about thirty rods from said propeller, and that said whistle must have been heard by those having the management of said brig, and had said brig then put her helm to port, or even kept on her course, she would have cleared said propeller, and there would have been no collision and no injury done to said brig.

That the wind was then blowing strong south-southeast, and that immediately after said whistle had sounded, by the negligence, carelessness, and unskilful management on the part of those navigating said brig, her course was immediately changed, and she was suddenly turned directly across the bows of said propeller, and by the force of the wind, without any neglect, carelessness, or default of the master or crew of said propeller, was driven with great violence towards said propeller, and with great violence struck on her larboard side against the stem of said propeller, knocking off her stem to about two feet under water, splitting open her bows, and wrenching off her ends on her starboard side, and otherwise doing great damage and injury to the said propeller; that from the time when the light of said brig was discovered until the collision above mentioned, the said propeller could not port her helm on account of her nearness to the shore and the shallowness of the water in which she was then sailing, and that she was proceeding with the greatest possible care and precaution, and that the said accident was occasioned entirely by the negligence and want of care and skill in the master, officers, and crew of the said brig, and not through any default or negligence of the master, officers, or crew of the said propeller; that immediately after said collision, said propeller continued backing until she entirely cleared said brig, when the said brig squared away, and continued on her way down the lake; that said propeller immediately commenced leaking, and it became necessary to prevent her from filling with water to proceed at once to the Racine pier, and having done so by lightening her cargo, and still further lightening her bows, her master and crew, with great exertions, and by the aid of her pumps, were enabled to bring her into the port of Chicago, where she was, at an expense of some three hundred dollars, repaired.

Third. The respondent denies that the said propeller, immediately after said collision, kept on her way without rendering, or offering to render said brig, or any of her crew, any assistance whatever, and that said brig was immediately turned in shore; but this respondent says that said propeller remained until said brig cleared away, and started on her course down the lake, and that no complaint whatever was made on the part of those navigating said brig that she was

injured, nor was the said propeller, or those having charge of her, desired to render any assistance to said brig.

Fourth. This respondent denies that at the time when the danger of a collision between the said propeller and the said brig was first perceived from the said brig, it was impossible for the said brig to get out of the way of said propeller, but on the contrary, this respondent says, that had said brig ported her helm, or even kept on her course, no collision would have taken place, and the said propeller and the said brig would have passed each other without any injury to either.

Fifth. This respondent denies that at the time of said collision the said brig Nebraska was of the value of seven thousand dollars, and that by reason of the careless, negligent, unskilful, and improper management of the said propeller, and by her neglect to assist said brig after the collision aforesaid, the said libellants have sustained damage to the amount of nine thousand dollars, or thereabouts, as stated and alleged in the seventh article of said libel.

Sixth. That all and singular the premises are true.

Wherefore, the respondent prays that this honorable Court would pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice administer in the premises.

HOYNE, MILLER, & LEWIS,
Proctors for Respondent.

United States of America, Northern District of Illinois, *ss.*

James E. Dalliba being duly sworn, deposes and says that he has read the foregoing answer, and that the same is true in substance and fact, as he is informed and verily believes.

JAMES E. DALLIBA.

Sworn to and subscribed before me, this 27th day of November, A. D. 1856.

WM. H. BRADLEY,
Clerk.

(Indorsed.) Filed Nov. 27th, 1856.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-six, came the marshal of said Northern District of Illinois, into the clerk's office aforesaid, and returned the said monition to him directed, together with notice of seizure of said propeller Oriental, and proof of publication thereof, and also the bond given by the claimant of said propeller Oriental, upon the release thereof by the marshal. Which said return, notice, proof of publication, and bond, with power of attorney thereto attached, are in the words and figures following, to wit:

I have executed the within writ, by attaching the within named propeller Oriental, her boats, tackle, apparel, and furniture, the 24th day of October, A. D. 1856, and held the same in my custody until released by a bond, which is herewith returned into Court. Also by giving due notice of the same, as the law requires, a certificate of which notice is hereunto attached.

IRAM NYE,
U. S. Marshal.
By J. W. FRENCH,
Deputy.

Notice.

To all persons having or pretending to have any right, title, or interest in or to the steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, or knowing or having anything to say why said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, should not be pronounced against, according to the prayer of a libel hereinafter mentioned.

You are hereby notified, that by virtue of a monition, dated the 24th day of October, A. D. 1856, issued out of and under the seal of the United States District Court, in and for the Northern District of Illinois, in Admiralty, in pursuance of the prayer of a libel filed in said Court, by John Volk and Horatio N. Turner, against said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, praying that judgment may be pronounced against said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, in favor of said libellants, for the sum of nine thousand dollars, in a cause civil and maritime. I have seized said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, and her appurtenances, under and by virtue of said monition.

You are hereby further notified, to be and appear on the first Monday of December next, if that shall be a day of jurisdiction; if not, on the next day of jurisdiction thereafter, at ten o'clock of that day, at the term of said Court then to be holden, in and for said District, at the city of Chicago, to interpose your claim, and say why said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, and furniture, and her appurtenances, should not be pronounced against in said matter, for said sum and costs, pursuant to the prayer of said libel.

IRAM NYE,
U. S. Marshal, Northern District of Illinois.

Chicago, Oct. 24th, 1856.

This is to certify that the annexed notice was published in the Chicago Journal, a daily newspaper, printed in the city of Chicago, county of Cook, and State of Illinois, 14 times, to wit, for 2 successive weeks, as follows: the first insertion on the 24th day of Oct., 1856, in Vol. 15, No. of said paper.

Dated at Chicago, Nov. 15, 185 .

R. L. & C. L. WILSON & CO.,
Publishers Chicago Daily Journal.

Said monition and return, with said notice and proof of publication thereto attached, was indorsed by the clerk.

Filed this 1st day of December, A. D. 1856.

WM. H. BRADLEY,
Clerk.

Know all men by these presents, that the American Transportation Company has made, constituted, and appointed, and by these presents does make, constitute, and appoint James E. Dalliba, of Chicago, State of Illinois, the true and lawful attorney of the said, the American Transportation Company, to ask, demand, sue for, commence, and conduct action or proceedings for any and all claims, sums, and demands belonging to, or which are or shall be due, owing, payable, or belonging to the said, the American Transportation Company, and to do and perform all and every act, deed, and thing which shall be necessary or proper, to the proper conducting of the business of the said, the American Transportation Company, or appertaining to the said business of said Company, at Chicago, in the State of Illinois, and to retain and employ attorneys, proctors, counsellors, and advocates, to commence and conduct said actions and proceedings, and to use and take all necessary means for the purpose of executing and carrying out the power hereby given to the said attorney of the said, the American Transportation Company.

In witness whereof, the said the American Transportation Company has caused these presents to be signed and sealed by its President and Secretary, this 24th day of January, one thousand eight hundred and fifty-six.

RUFUS C. PALMER, [SEAL.]
WELLS D. WALBRIDGE, [SEAL.]

Hiram Niles, being duly sworn, says that he is one of the Directors, and the Vice-President of the American Transportation Company above named, and knows that the President and Secretary are duly empowered, by a by-law of the Board of Directors, to execute the above instrument in behalf of the Company.

HIRAM NILES.

CHICAGO, Nov. 4, 1856.

Sworn to and subscribed before me.

THOMAS DRUMMOND.

Know all men by these presents, that we, the American Transportation Company of Buffalo, State of New York, as principals,

and Charles H. Walker, of Chicago, County of Cook, and State of Illinois, as sureties, are held and firmly bound unto John Volk and Horatio N. Turner, in the penal sum of eighteen thousand dollars, to be paid unto the said John Volk and Horatio N. Turner, which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated at Chicago, the 25th day of October, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, in a certain cause of civil and maritime, moved and prosecuted in the District Court of the United States of America, for the Northern District of Illinois, on behalf of the above-named John Volk and Horatio N. Turner, against the steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, furniture, a warrant of arrest has been issued out of the said Court against the said steamboat or propeller Oriental, her engine, machinery, boats, tackle, apparel, furniture, which said warrant is now in the hands of Iram Nye, marshal of the said district; or, in virtue of which said warrant, the said steamboat or propeller, her engine, machinery, boats, tackle, apparel, furniture, has been arrested by Iram Nye, marshal, and are now in his custody. Now, therefore, the condition of this obligation is such, that if the above bounden American Transportation Company, the claimant of said steamboat or propeller, her engine, machinery, boats, tackle, apparel, furniture, shall well and truly abide and answer the decree of said Court, in the aforesaid cause, then this obligation shall be void; otherwise, it shall remain in full force and virtue.

THE AMERICAN TRANSPORTATION COMPANY, [SEAL.]
By James E. Dalliba, Att'y in fact.
CHARLES H. WALKER. [SEAL.]

United States of America, Northern District of Illinois, *ss.*

Charles H. Walker, being duly sworn, depose and says, that he is a resident of the Northern District of Illinois, and that he owns property in said district, subject to execution, worth eighteen thousand dollars, over and above all just debts and liabilities.

CHARLES H. WALKER.

Sworn to and subscribed before me, this 25th day of October, A. D. 1856.

JOHN A. BROSS,
U. S. Com'r Nor. Dis. Ill.

Security approved.

THOMAS DRUMMOND.

(Indorsed.) Filed Dec. 1st, 1856.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on the 7th day of February, in the year of our Lord one thousand eight hundred and fifty-seven, the deposition of Anthony Feldman, Jr., on the part of the respondents in said cause, was filed in said Clerk's office by the Commissioner, before whom the same was taken, and is in the words and figures following, to wit.

District Court of the United States of America, for the Northern District of Illinois.

JOHN VOLK and HORATIO N. TURNER
v.
PROPELLER ORIENTAL.
} In Admiralty.

The deposition of Anthony Feldman, Jr., taken on behalf of the respondents, by agreement of the parties, to be used in the trial of the above-entitled cause, now pending before the honorable District Court of the United States of America, at the city of Chicago, within and for the Northern District of Illinois, at my office in said city of Chicago, on the sixth day of February, in the year of our Lord one thousand eight hundred and fifty-seven. And Mr. Miller on behalf of the respondents, and Mr. Phul on behalf of the libellants, were present at the caption thereof before me.

J. T. MOULTON,
U. S. Commissioner.

And the said A. Feldman, Jr., was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon upon examination depose, testify, and say,—

I was a hand on board the propeller Oriental, on the 19th of October, 1856.

2d Int. What time did you leave Milwaukie?

Ans. We left Milwaukie on the evening of the 19th of October last, about half past six or seven o'clock.

3d Int. In what capacity were you employed?

Ans. I was wheelsman.

4th Int. When did you take the wheel after you left Milwaukie?

Ans. I took the wheel, it was just below the Point; it was a little after nine; it must have been; I mean Racine Point.

5th Int. Did you discover any lights after you took the wheel? If so, state what lights particularly?

Ans. I first discovered the Racine Light, and then I was ordered to keep up for it, to keep right heading for it, and I did so. Whilst keeping up for it, I discovered another light two or three points over the larboard bow. Then the vessel began *began* to approach us. I mean the other light. Shortly after that, it appeared that a collision was going to take place. The whistle of the propeller was then

blown. Immediately after that the bell was rung to stop, and then order was given to midship the wheel, and at the same time three bells was rung to go back, and while she was backing and the wheel was amidships, she steered to the starboard, towards the shore; then the vessel struck on the propeller's stem, and she passed us on the starboard side.

6th Int. State how long you remained without moving ahead after the collision?

Ans. About ten minutes before she went ahead.

7th Int. Where did you go to then?

Ans. To Racine Pier.

8th Int. Where was the vessel when you started to go ahead?

Ans. I could not see it then. She went on further. I did not see her any more.

Cross-Examined by Mr. De Phul.

1st Cross-Int. How old are you? How long have you been a sailor, and how long have you navigated on the Lakes?

Ans. I am 23 years of age; have been a sailor four seasons, all on the Lakes.

2d Cross-Int. State what light there is on Racine Point?

Ans. It is a bright light. I don't know it is revolving or stationary. It is not a red light. It doesn't show any colors. I am sure it is not red.

3d Cross-Int. Which side of the propeller did you see the Racine Light?

Ans. Right dead ahead.

4th Cross-Int. What sort of light was the one you next saw?

Ans. It was a bright light; it was the vessel's light.

5th Cross-Int. How many men were at the wheel besides you? and who gave the commands mentioned by you in your direct examination?

Ans. I was alone. Captain Steele gave all the commands.

6th Cross-Int. How far were you from shore at the time of the collision?

Ans. I could hardly tell. I couldn't see the shore from the pilothouse.

7th Cross-Int. Were you excited? And was there any confusion aboard the propeller immediately after the collision?

Ans. I wasn't excited; there wasn't much confusion; they ran to see if there was any damage done.

8th Cross-Int. Did you leave the wheel at any time during or immediately after the collision? If yea, state particularly what you did?

Ans. I left the wheel when she struck; just about the time she struck. I went round through the hull for to come in through

the larboard side again. I didn't stop to see if any damage was done. I went right round from the starboard side. I went right back to the wheel, and straightened the vessel, and put her on her course again for the Racine light.

9th Cross-Int. Did you then look for the vessel?

Ans. No; I did not.

10th Cross-Int. Were you steering at any time by the compass? If yea, state how you were steering.

Ans. I was steering by the compass, and was keeping her steady by the light. I was steering southwest by south by the compass; it was the compass on the larboard hand; there were two compasses in the binnacle.

11th Cross-Int. Do you know how much water the Propeller drew when she left Milwaukee? If so, state it.

Ans. I couldn't tell how much water she drew exactly; she drew about ten feet on the average; about ten and a-half astern.

12th Cross-Int. How long had you been at the wheel when you were ordered to head for the Racine light?

Ans. I was about fifteen minutes. I can't tell exactly; it has fallen out of my mind since; but call it fifteen minutes.

13th Cross-Int. How close were you to the vessel when the first bell was rung?

Ans. We were about four or five times the length of the vessel from her.

14th Cross-Int. How near were you when the bell rung three times, as stated by you in your direct examination?

Ans. I couldn't tell exactly how near we was then; we was twice the length of her or so.

15th Cross-Int. How fast were you running before the first bell rung?

Ans. We was running under a check. I couldn't tell how fast we was running.

16th Cross-Int. How far would the propeller run after the engine was reversed?

Ans. She would run about twice the length of her, at the rate she was going.

17th Cross-Int. Does the Oriental steer as easy as vessels of her size usually do?

Ans. No, sir; she steers very hard.

18th Cross-Int. Is it usual to have but one man at the wheel? and can one man steer her properly?

Ans. One man can steer her in smooth water on the lake when she is on her course, straitened up entirely; and three, when she is going in or out of port. It is not usual to have but one man at the wheel.

Direct Examination resumed.

9th Int. In smooth weather, when the propeller is on her course and straitened up, how many men is it usual to have at the wheel at a time?

Ans. Two men on the watch, and one of them steers half the time in four hours; the other stands by him, and helps to get the wheel over when it is wanted; he is on deck, or some other place handy.

ANTHONY FELDMAN, JR.

Subscribed, February 6, 1857.

J. T. MOULTON,
U. S. Commissioner.

(Indorsed.) Received open from the hand of the Commissioner, and filed February 7, 1857.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on Friday, the thirteenth day of February, in the year of our Lord, one thousand eighteen hundred and fifty-seven, in the December Term, A. D. 1856, of said District Court of the United States for said Northern District of Illinois, at Chicago aforesaid, in the record of the proceedings of said Court in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now comes the parties by their respective proctors, and by agreement this cause is now set down for hearing upon the libel, the answer thereto, and testimony, written and oral; and after hearing and taking down the testimonial of a John Limb, and a part of that of Allen Soper, the hour of adjournment having arrived, the further hearing of the evidence is postponed until to-morrow morning.

And on the next day, to wit, Saturday, the fourteenth day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof, in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their respective proctors, and concluded the taking of the testimony of Allen Soper, and also of William L. Fitch, when the hour of adjournment having arrived, the

further examination of witnesses is postponed until Monday morning next.

And afterwards, to wit, on Monday, the sixteenth day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their respective proctors, and after hearing and taking the testimony of Richard C. McKetrick, and a part of that of Moses H. Collins, on behalf of the respondents, the hour of adjournment having arrived, the further hearing of testimony is postponed until to-morrow morning.

And on the next day, to wit, Tuesday, the seventeenth day of February, in the year last aforesaid, in said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their attorneys, and after the cross-examination of the witness Moses H. Collins, had been concluded, and the examination of Squire Alexander had been also concluded, the hour of adjournment having arrived, the further examination of witnesses is postponed until to-morrow morning.

And on the next day, to wit, Wednesday, the eighteenth day of February, in the year last aforesaid, in said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their attorneys, and after hearing and taking the testimony of Horace Barber, and a part of that of Truman W. Steele, the hour of adjournment having arrived, the further examination of witnesses is postponed until to-morrow morning.

And on the next day, to wit, Thursday, the nineteenth day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their attorneys, and concluded the hearing and taking the testimony of Truman W. Steele, and also commenced the examination of Hiram McHenry, when the hour of adjournment having arrived, the further examination of witnesses is postponed until to-morrow morning.

And on the next day, to wit, Friday, the twentieth day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their attorneys, and after concluding the testimony of Hiram McHenry, and also of James Stewart and C. N. Cramer, and A. W. Rossman, the hour of adjournment having arrived, the further examination of witnesses is postponed until to-morrow morning.

And on the next day, to wit, Saturday, the twenty-first day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their respective proctors, and after hearing and taking the testimony of Charles Harding, W. H. B. Warren, B. F. Davison, Samuel R. Scoville, T. S. Boyd, and resumed again the examination of Allen Soper, when the hour of adjournment having arrived, and the further examination of witnesses is postponed until Monday morning next.

And afterwards, to wit, on Monday, the twenty-third day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their proctors, and after hearing the concluding testimony of Allen Soper, and also that of Edward Kelly, and a part of the arguments of counsel, the hour of adjourn-

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ment having arrived, the further argument of counsel is postponed until to-morrow morning.

And on the next day, to wit, Tuesday the twenty-fourth day of February, in the year last aforesaid, in the said December Term of said Court, in the record of the proceedings thereof in said cause, the following entry was made, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel.

Now come again the parties by their respective proctors, and after hearing the concluding arguments of the respective advocates, the Court not being now sufficiently advised in the premises, takes time to consider.

The testimony on behalf of the libellants and respondents in said cause, taken in said Court on the 13th, 14th, 16th, 17th, 18th, 19th, 20th, 21st, and 23d days of February, in the year last aforesaid, in the said December Term of said Court, is in the words and figures following, to wit.

In the District Court, United States, Northern District of Illinois.

To wit, Friday, February 13th, 1857.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL. } Libel for Collision.

John Limb, a witness produced and sworn on behalf of the libellants in the above entitled cause, deposes as follows:

I am a sailor; first went to sea in 1832, and have been to sea ever since. Am thirty-three years of age, have sailed all over the world almost, as a boy, seaman, and in every capacity of a seaman's life.

I was seven voyages out of the port of London, four to Calcutta, and three to Madras, five of them as mate.

Was on board the Nebraska at the time of the collision as second mate, going from Chicago to Green Bay. We were five or six miles south of the Point of Racine at commencement of my watch on deck at 8 o'clock; mine was the starboard watch. When my watch commenced we were steering north half east, three to four miles from the shore. The wind was south-southeast; about 6 to 7 knot breeze.

It was foggy at intervals, and smoky on the horizon. We had a bright light on the pallbits, which at the time of the collision could be seen two miles and a half or three miles. I continued on deck till after the collision; from the time I came on deck no change was made in the course of the vessel before the collision; during all that time before the collision our vessel was sailing the same course, north half east.

It must have been somewhere about nine o'clock when we passed Racine. The collision occurred about 15 minutes to 10 o'clock. From the time I came on deck until the collision, we were no time nearer the shore than three and a half miles. I saw the light of the propeller and reported it to the captain, and from what the captain said, I judged he had seen it before; he said, yes. At the time I saw the light and reported to the captain, it was northeast half north, compass bearings.

It was over the starboard bow three points. I went to the weather compass and took the bearings from that. I knew it was a steamboat from her red light. Prior to the collision, I watched the light of the propeller, and as we proceeded down the lake, she continued on her course until she got almost abeam of us, and then seemed to me to steer directly for us. At the time of collision, she was bearing down right stem on to our vessel. A diagram here shown to witness, a red line on which correctly represents the course of our vessel. From the first we made out the hull of the propeller, she was a length or a length and a half from us on our starboard side; that was too near, in my opinion, for the vessel to answer her helm so as to get out of the way. I hailed the propeller, and asked them to stop; they answered No. She came right stem on to us, and I clapped my hand right on to her stem; she immediately backed clear of us, or got clear of us, and went right off, and never waited to see whether we sunk or afloat. The captain gave orders to have the vessel close up under the land. Some of the hands were employed pumping and baling to keep her free. We hauled the chains up from the chain-locker, and put them on the weather side, to keep the bad place out of the water as much as we could. The leak increased; it was impossible to keep her free, and she went down in 16 feet of water, 4 or 5 miles from Milwaukie. We took to the boat, and pulled into Milwaukie. There was no possibility whatever of avoiding a collision, whichever way the helm was turned, after we discovered the hull of the Oriental.

I believe it was our captain cried to starboard our helm as soon as the hull of the Oriental was in sight as aforesaid.

To have made the collision as light as possible, if it would have had any effect at all, the helm of our vessel should have been put a starboard, to have lightened the blow.

To have put the helm a port, it would have dismasted the vessel and taken the bowsprit out of her quite likely. I believe there was not time for the vessel to swing any after the order was given; it might have altered her a little. The propeller struck the brig five feet abaft the fore-rigging, starboard side. At that time, the land was about 3½ miles off. The propeller was on east side of the vessel. The lead was heaved a few minutes after the collision. I noticed from 7 to 10 fathom of line going out of the captain's hand; don't know whether he found bottom; don't believe he did. From the

time of collision we went perhaps a quarter of a mile before the lead was hove. At time of collision we had three men on watch besides myself and the captain. I was watching the vessel and lights. I was on the lookout, generally walking up and down the deck, on starboard side; was there when I first saw the light of the propeller; captain was also keeping a lookout. It was not more than 10 or 15 minutes from the time the propeller changed her course and was apparently coming down and steering directly to us; stem on to us. When I saw the lights of the propeller first, it was 20 minutes past nine, and the collision occurred 15 minutes to ten. I looked to the time in the binnacle. We had all the sail which we had, set. We were going at about six or seven knots.

I could not notice that the speed of the propeller was checked from the time we saw her hull to the time of the collision. I heard neither bell or whistle until I perceived her hull; I then heard a bell and whistle; we carried a bright white light. The canvas and rigging of our vessel were in fine order, and her hull so far as I could discover, and where the collision broke her timbers they appeared to be sound. She did not appear to leak any, but appeared to be perfectly dry when I joined her.

The sails were trimmed, the main boom was over our larboard quarter at the time of the collision. The propeller struck us forward of the half of the ship; by that means it made our head pay off, and brought the wind on the larboard quarter, and main boom jibed over on starboard side of the vessel, and struck the propeller.

The propeller made no offers of assistance; but as soon as she got clear of us went right off, and did not ask us anything about it; our vessel sunk, I think, about one o'clock.

Racine was the nearest point to the place of collision, but the wind was more favorable for us to go to Milwaukee; it would not have taken over three-fourths of an hour for the propeller to have towed us into Racine after the collision, and had we been towed in our vessel might have been saved.

Cross-Examination.

I have been sailing on the lakes only last season; it was my first season; I sailed the entire season; I went aboard the Nebraska the 18th of October; we went out of Chicago near two o'clock on Sunday the 19th instant; before two; betwixt one and two. When I took my watch we were about 5 miles to southward of south point of Racine; don't know how far south of Racine the south point is; I cannot tell about how far it is this side of Racine. Before going on board the Nebraska I had been sailing from Chicago to Buffalo part of the season, and a part of the season from Chicago to Green Bay; have seen the reef on charts in front of Racine, and had seen it on charts before I went on board the Nebraska. Passing down the lake,

to the best of my knowledge, we passed outside of the reef; I only judge from the distance we were from the shore, and from the course we were taking. We were abreast of the Racine light about nine o'clock; saw the light as we passed it. I first saw the Racine light at eight o'clock, when I came on deck; we were then perhaps ten miles from it, perhaps not so much; when I first saw the Racine light we were about five miles from the shore; I could then see the land and the lights; our course was then north half east, which was not changed until we were abreast of the Racine light.

When abreast of the Racine light we were about four or five miles probably from the shore; according to my best judgment, we were not nearer the shore from the commencement of my watch than when abreast of the Racine light; do not know the precise distance of the reef from the land in front of Racine; have been told it was from two to two and a half and three miles. Know where the north point of Racine is; I believe it is about four miles north of Racine; we were to the northward of the north point at time of collision; perhaps two miles to the north of it, and about 3½ miles off from the land.

From the appearance of the land I took to be Racine Point, I think we were to the northward of the point; could see the point clear enough to discern it was the point when abreast of it; could see the land, but no light on the point; we were about 3½ to 4 miles from the point when we passed it; our course was not changed from that time up to the time of the collision. It was clear at intervals; it was clear at the time we passed the point. I could see the land plain enough to prove to me that it was Racine Point. At the time we passed the point our course was north half east, and continued on that course up to the time of the collision, because if the course had been altered, I should have been told of it. I was watching the man at the wheel every few minutes; either the captain or the man at the wheel would have told me. The captain was on deck from the time he left Chicago to the time of the collision, except when he went below for supper. When we first saw the light of the propeller she was 2½ or 3 miles from us; we were then a little to the southward of the north point of Racine, not more than a mile south of the north point. Saw on the propeller a red light, and continued to see it down to the time of collision, except about five minutes before the collision. I had lost sight of the propeller's lights, and did not see *see* her light again until I saw her hull; I then saw a red light, when she was then about her length and a half from us. At the time of the collision, there was not so much wind as when we left Chicago. When I first saw the propeller's lights, I was in the starboard fore-rigging of our vessel, perhaps ten feet from the bluff of her bow on starboard side.

The propeller's light was bearing northeast half north from us, bearing three points northeast half north on our starboard bow. When I first discovered it, we were going them from 6 to 7 knot. From

the time I first saw the light of the propeller, it altered at times, but did not take particular notice how much it altered until she got nearly abreast of us; then she seemingly steered to strike for us. When she was abreast of us, she was about a mile and a half or two miles from us, on our starboard side. From the time she was right abreast of it, it was about ten to fifteen minutes to the time of the collision. She struck us five feet abaft the fore-rigging on starboard side, to the best of my knowledge. I did not measure the distance, but I and another man looked at it and passed our judgment on it; don't know the name of the man; he shipped on board the vessel; we passed our judgment about an hour after the collision, when we were on the way towards Milwaukee. I could see we were nearer the land at the time we made the estimate as to the point where she struck our vessel; we were steering northwest; our helm was put to the starboard after the collision, and the wind was on our larboard side; we were trying to get into the land as close as we could, so if we sunk it would be in shoal water; we did not jibe our mainsail back again after the collision, because it was disabled, and we did not require it; the boom top-lift was carried away in the collision and let the boom down on the taffrail, her course being north half east, with wind south-south-east, changing the course of the vessel northwest by north would jibe her mainsail.

Our vessel's course was north half east, at the time the propeller struck her, because I am certain our vessel's course had never been changed, for if it had been changed I should have noticed it by the wind. I was paying every attention, watching both the wind and the vessel, as it was my duty to do so. I saw no excitement on our vessel either before the collision or after; about the time of the collision do not know the bearing of the Racine light.

After the collision we lowered our mainsail, about half an hour after the collision; had done nothing with our sails to that time, except hauling in our starboard braces a little, which we did as soon as possible after the collision.

The propeller dropped astern of us on our starboard side; we left her on our right hand; when we lowered away the mainsail, could not see the propeller; perhaps we had then gone about three miles from the place of collision.

At the time of the collision, we were heading north half east, and the propeller was coming stem on to us, near west. I don't know the names of the men on deck at the time of the collision, except the man at the wheel, his name was Roberts; our light was where it could be distinctly seen: it was a lamp with reflectors; had no other signal lights aboard. I remained in the rigging perhaps two or three minutes after I first saw the propeller's light, when I came down on deck and reported to the captain, when I went on the starboard side again, where I could distinctly see the propeller's light, and I remained there all the time, except now and then I went to the man at

to the best of my knowledge, we passed outside of the reef; I only judge from the distance we were from the shore, and from the course we were taking. We were abreast of the Racine light about nine o'clock; saw the light as we passed it. I first saw the Racine light at eight o'clock, when I came on deck; we were then perhaps ten miles from it, perhaps not so much; when I first saw the Racine light we were about five miles from the shore; I could then see the land and the lights; our course was then north half east, which was not changed until we were abreast of the Racine light.

When abreast of the Racine light we were about four or five miles probably from the shore; according to my best judgment, we were not nearer the shore from the commencement of my watch than when abreast of the Racine light; do not know the precise distance of the reef from the land in front of Racine; have been told it was from two to two and a half and three miles. Know where the north point of Racine is; I believe it is about four miles north of Racine; we were to the northward of the north point at time of collision; perhaps two miles to the north of it, and about 3½ miles off from the land.

From the appearance of the land I took to be Racine Point, I think we were to the northward of the point; could see the point clear enough to discern it was the point when abreast of it; could see the land, but no light on the point; we were about 3½ to 4 miles from the point when we passed it; our course was not changed from that time up to the time of the collision. It was clear at intervals; it was clear at the time we passed the point. I could see the land plain enough to prove to me that it was Racine Point. At the time we passed the point our course was north half east, and continued on that course up to the time of the collision, because if the course had been altered, I should have been told of it. I was watching the man at the wheel every few minutes; either the captain or the man at the wheel would have told me. The captain was on deck from the time he left Chicago to the time of the collision, except when he went below for supper. When we first saw the light of the propeller she was 2½ or 3 miles from us; we were then a little to the southward of the north point of Racine, not more than a mile south of the north point. Saw on the propeller a red light, and continued to see it down to the time of collision, except about five minutes before the collision. I had lost sight of the propeller's lights, and did not see *see* her light again until I saw her hull; I then saw a red light, when she was then about her length and a half from us. At the time of the collision, there was not so much wind as when we left Chicago. When I first saw the propeller's lights, I was in the starboard fore-rigging of our vessel, perhaps ten feet from the bluff of her bow on starboard side.

The propeller's light was bearing northeast half north from us, bearing three points northeast half north on our starboard bow. When I first discovered it, we were going them from 6 to 7 knot. From

the time I first saw the light of the propeller, it altered at times, but did not take particular notice how much it altered until she got nearly abreast of us; then she seemingly steered to strike for us. When she was abreast of us, she was about a mile and a half or two miles from us, on our starboard side. From the time she was right abreast of it, it was about ten to fifteen minutes to the time of the collision. She struck us five feet abaft the fore-rigging on starboard side, to the best of my knowledge. I did not measure the distance, but I and another man looked at it and passed our judgment on it; don't know the name of the man; he shipped on board the vessel; we passed our judgment about an hour after the collision, when we were on the way towards Milwaukee. I could see we were nearer the land at the time we made the estimate as to the point where she struck our vessel; we were steering northwest; our helm was put to the starboard after the collision, and the wind was on our larboard side; we were trying to get into the land as close as we could, so if we sunk it would be in shoal water; we did not jibe our mainsail back again after the collision, because it was disabled, and we did not require it; the boom top-lift was carried away in the collision and let the boom down on the taffrail, her course being north half east, with wind south-south-east, changing the course of the vessel northwest by north would jibe her mainsail.

Our vessel's course was north half east, at the time the propeller struck her, because I am certain our vessel's course had never been changed, for if it had been changed I should have noticed it by the wind. I was paying every attention, watching both the wind and the vessel, as it was my duty to do so. I saw no excitement on our vessel either before the collision or after; about the time of the collision do not know the bearing of the Racine light.

After the collision we lowered our mainsail, about half an hour after the collision; had done nothing with our sails to that time, except hauling in our starboard braces a little, which we did as soon as possible after the collision.

The propeller dropped astern of us on our starboard side; we left her on our right hand; when we lowered away the mainsail, could not see the propeller; perhaps we had then gone about three miles from the place of collision.

At the time of the collision, we were heading north half east, and the propeller was coming stem on to us, near west. I don't know the names of the men on deck at the time of the collision, except the man at the wheel, his name was Roberts; our light was where it could be distinctly seen: it was a lamp with reflectors; had no other signal lights aboard. I remained in the rigging perhaps two or three minutes after I first saw the propeller's light, when I came down on deck and reported to the captain, when I went on the starboard side again, where I could distinctly see the propeller's light, and I remained there all the time, except now and then I went to the man at

the helm, and to see the compass; perhaps I went four or five times, not less.

Direct resumed.

Our lamp was arranged so as to show different colors, depending upon the tack or course of the vessel; at that time she had a white light.

The boom did not require to be changed after the collision, as it was right for the course we were taking, being on the starboard side.

JOHN LIMB.

Allen Soper, sworn on behalf of the libellants, deposes as follows: I am a sailor; have been a sailor about eleven years; have been master of some craft seven years, all of it on the lakes, mostly on the upper lakes; at all the ports. Last October I was twenty-three years old. I was captain of the brig Nebraska at the time of the collision. We left Chicago, October 19th, 1856, bound for Green Bay; had not touched at any port from time we left Chicago prior to collision; we passed Racine light, I think, a little before nine, probably ten to fifteen minutes before nine; perhaps not before nine; our course was north half east at that time; wind was about south-southeast, might have been half a point. We were going from six to seven miles an hour. It was a very nice night, starlight; was not foggy, a little hazy; at time we passed Racine, we were perhaps three miles from the shore, perhaps a little more; had a bright white light hung on the pallbits; our light might have been seen about three miles that night. I was on deck from the time I left Chicago up to the collision, except when eating my supper. Roberts was steering at time of collision. No change was made in the course of the vessel from the time we passed Racine up to the collision. No material change could have been made in her course without my knowledge. I think the collision occurred a little before ten, perhaps ten; did not look at the time myself; at the time of the collision, we were from two to two and a half miles from the shore, perhaps more.

I think I saw the lights of the propeller four miles off. I had seen the light before it was reported to me, perhaps five minutes before. I first saw the white light. I think it was ten minutes after I first saw the white light before I saw the red and green lights. The propeller's lights were from two to three points on our starboard bow, when I first saw them; did not look at the compass to ascertain.

From the time I first saw the lights when she was nearly abreast of us, she appeared to change her course gradually towards us as we went down the lake. The propeller was about her length, or half her length from us, when I read her name. I knew she was a steamboat or propeller from the first, from her lights. We kept on our course, and I saw all the time that the propeller was approaching us. She was

getting close by; when she was from two to three times her length from us, she blowed her whistle, and shortly after that, I heard several singing out on the propeller, hard a port, and hard a starboard; heard both kinds; don't know who they were singing out to; as I heard them singing out in that way, I thought I would wait and see which way they was going, before I done anything.

I saw that there was no alteration made in the propeller, but that she was heading the same way. I then told the man to put his helm hard a starboard, and I went aft to see that it was done. At that time she was probably half her length or the whole of her length off of us. Our vessel had not moved more than half a point when the propeller hit us. At the time, she was from a half to a whole of her length from us. She was not directly abreast of us, but abreast of our headgear. If she had been abreast of us, and far enough off, we could have got by and avoided the collision. She struck us right aft of the fore-rigging, about four or five feet, I should think (didn't measure it), on the starboard side. As she struck us, the propeller being loaded and heavy, the vessel bounded off (being light) towards the shore, her head towards the shore, and her mainsail jibed over and pulled the top lift off of her boom. We dragged past her, and, as our boom jibed it caught the top hamper, or stem, or something or other forward on the propeller.

Our having canvas on, we dragged along past the propeller; we dragged along clear of her, and hauled in towards the land; in a few minutes after we got clear of her, I hove the lead ten fathoms out, and found no bottom. We then took the mainsail in, and hauled her in northwest, for a short time, and then west northwest. We got the chains out of the locker as fast as we could, and over on the larboard side to windward.

She was leaking very fast; we could not keep her clear with the pumps, and commenced baling out of the fore-hatch with pails. We could not keep her even then. We put the chains over on the larboard and winded side, to keep the hole which was stove in her out of the water as much as possible. We tried to get in towards the land, with the pumps and baling going all the time. When she sunk in 16 feet water, about three miles south of Milwaukie, we rolled her canvas up, took to the boat, and rowed to Milwaukie. Soon after the collision, as soon as we got clear of the propeller, we took a light over the side to see the extent of the injury, and found a good-sized hole through everything; cut her rail and everything down under the water.

Examination postponed, and Court adjourned until to-morrow morning.

Saturday, February 14th, 1857.

Direct examination of Allen Soper resumed.

Plat or diagram here shown witness. The red line on the same indicates correctly the course of our vessel.

When I first saw the hull of the propeller she was her length, and perhaps twice her length off. From the time I first saw her hull, until the collision, there was no difference in her speed, apparently.

The propeller was from 2½ to 3 miles off when I first saw her colored lights. When I first saw the colored lights they bore a little more abeam than when I first saw her white lights.

Did not notice any change in the course of the propeller, from the time I saw her hull and the collision; there was no change in that time.

When I heard the orders, on the propeller, to port and starboard helm, it was about the same time that I saw her hull, and she was then about a length or a length and a half of her hull off.

I did not hail the propeller; could not say positively whether she was hailed from our vessel.

When I gave orders to starboard our helm, it was not possible to avoid a collision.

I gave orders to starboard the helm to make the blow a little lighter. If I had put my helm down, don't think she would have come up more than a point, and would have come together with more force and speed than if she had been going off, and by keeping her off she would be more navigable. If her helm had been put to port she would not have come to enough, so that her sails would have come into the wind. If there had been time for her to come around, then it would have brought her into an unmanageable condition, if we had not had time to trim her canvas. There was not time to trim her canvas.

From time we passed Racine to time of collision, I was walking around on my vessel; was most of the time near the man at the wheel. Before I saw the lights of the propeller I had been sitting on the taffrail rail aft. I did not hear any bell, but heard the whistle on the propeller when she was abreast, from two to three times her length off.

The Nebraska was of two hundred forty odd tons; her hull was in good condition, her rigging first-rate; everything aboard of her was good.

Think she was worth $7000. Am acquainted with the value of similar vessels. She had had considerable repairs; don't positively know the amount of the repairs.

Witness shown bills of sails, repairs, rigging, and running gear; knows they are bills of things which had been furnished to said vessel; was aboard the vessel when she was launched; think she was seven years old in spring of 1856.

I have sailed on all kinds of vessels navigating the Lakes except full-rigged brigs. Was on Ward's line of boats for a while. I am very familiar with the lake shore between here and Green Bay; as much so, I suppose, as any man you can pick up. Some vary a

point or half a point in going to Green Bay. On that trip we took that course, north half east, opposite Kenosha. From Chicago to Green Bay, the direct course would be north half east, or north quarter east; north might fetch it pretty nearly.

After the collision, our vessel was afloat about three hours. Collision took place near about ten, and it was near about one when we left her.

Think it would have taken about from three-quarters to one and a half hours to have towed us to Racine Pier after the collision. The vessel could have been saved if she had been towed.

The light at Racine is a bright revolving light. I presume likely I saw the Racine light ten minutes before the collision, but very dim. It was about the last a person could see of it.

I think the propeller was steering for the light we had on our pallbits, mistaking it for the Racine light, and probably a good deal closer to it than they were aware of.

I think the sails of our vessel might have been seen from a quarter to half a mile off, in the direction the propeller was, if they had been keeping a good lookout. Think at least half a mile.

Shown another bill of repairs and supplies, &c., marked "C," and articles described in bill went into the Nebraska; I know the articles described in all bills referred to went into the Nebraska.

No offers of assistance were made, as I heard, by the propeller after the collision; she never stopped to learn anything about us as I know of.

Testimony as to the bills excepted to by the defendant's proctors.

I know the materials and work specified in the various accounts referred to went into the Nebraska.

Cross-Examination.

I saw the propeller's white light first; I presume it was three miles off, perhaps more. Did not mention it to the wheelsman immediately, but did soon after; did so as soon as I saw her red and green lights; told him then to keep her steady, so as not to bother them; this was, perhaps, five minutes after I first saw the white light. When I first saw the white light, it bore, I think, from 2 to 3 points on our starboard bow. When I first saw the colored lights, they bore a little more abeam of us, a little more on our starboard bow; must have been, I think, a couple of points more abeam than when I first her white light. When I first saw her colored lights, she was, I think, from 2 to 2½ miles off; there was a gradual change in the bearing of the propeller off to the west more, from the time I saw her colored lights, to the time I saw her hull.

When I saw her hull first don't know as there was any difference

in her bearing; before she struck she was heading about west; abreast of our head-gear, not quite abreast of where she hit us; when I first saw her hull she was from one to two times her length off from us; she might have been three times her length off; when I say abreast, I mean at right angles. I saw the white and red light of the propeller just before I saw her hull; was standing where I could not see her green lights. I see her red light whenever I looked at her, from the first time I saw it up to the time of the collision. I see the Racine light just before she struck us; slightly seen it; it was getting about the last legs of it.

I did not notice its bearing by the compass; but, as near as I recollect, think it was bearing then about southwest by west. At the time of the collision I think we were between a mile and two miles north of the point; might, perhaps, have been three miles; don't know as it was quite so far though. I see the land as we passed the north point; could see the land there plainer than when we passed Racine; see the land from Racine down to the point; when abreast of the point think we were from two to three miles from the shore, and at the time of the collision a little further from the shore than when abreast of the point. There might have been half a mile difference, and we might have been half a mile further from the shore than when we passed the point.

About three minutes, or after the vessel had gone somewhere about a quarter of a mile after the collision, I hove the lead; I told the man at the wheel to keep her then northwest; did not go to the wheel to see if he kept her steady on her course northwest; I told him to keep her northwest; before I hove the lead it took me perhaps two or three minutes clearing the line; she had not been clear of the propeller more than two or three minutes, I think, when I told him to keep her that course; after that we hauled her in west-northwest, and after that I hauled her in a point more; don't know how long we ran of the northwest course, perhaps half an hour, perhaps not quite so long; could not say positively how long we were on the west-northwest course; perhaps half an hour, and then her course was altered to west by north; on which last course we continued her perhaps about the same time, half an hour. When the vessel sunk don't know what course we were going; was hugging the land and following the shore so near as to be in shoal water, so as not to wet us bad if she went down. Shortly after the collision we settled away the mainsail; perhaps she had went a couple of miles before we settled away the mainsail.

We shipped our wheelsman Roberts about twenty minutes before we went out of Chicago; shipped him as a seaman with two or three others at the same time.

From the time I first saw the red and green light of the propeller I had time to luff before the collision, if I had been a mind to; but did not consider it my business to run all over the lake to avoid her.

Don't know the names of the men on deck besides Roberts; there were five men, all told, on deck, including myself.

Direct resumed.

The vessel went to pieces after she sunk. It is customary to steer by courses rather than by lights; sometimes we might get a star right ahead, and steer her by that as much as by the compass, but one would keep the compass in view all the time; if there was a star on her course we would steer her by a star, but would not change her course at all to steer by a star, but would keep her on her course by the compass.

Additional accounts shown to witness marked "D," "E," and "F;" they are correct; also one item in another account, marked "G," date of May 26th, for Manilla, to amount of $3448, which witness states is correct. Same objection made by defendant's proctor.

A. SOPER.

February 20th, 1857.

James Stewart sworn, on behalf of libellants.

I reside in Milwaukie; was acquainted with the brig Nebraska last spring, and previous; we turned her over to Jones last winter for $5500, cash value; she was well worth that at the time; should consider her so; that was a year ago last fall, at close of navigation.

Cross-Examination.

A vessel might be worth $5000 in the spring, and $5500 in the fall. The year before I bought her, that was in the spring of 1854, she had had $2500 repairs on her; this vessel, probably, might depreciate 6 or 8 per cent. in one season, in ordinary use; from the time I sold her until she was lost, think she might depreciate with ordinary wear and tear about 6 per cent; she was a middling old vessel; was considered a middling good vessel; she would class about "B 2," at the time, season before she was lost; I had carried two cargoes of grain in her, the season previous to the one in which she was lost, from Milwaukie to Buffalo; she was launched 17th of March, 1849.

Direct resumed.

Market price of vessels depends upon the prospects of freight and business, as to whether they are higher in the spring than in the fall; a year ago last fall, would have sold a vessel cheaper than I would in spring of 1856. I think if $1000 had been laid out on her from the time I sold her before she was lost, it would make her that much better.

Prices of vessels, I think, increased a little between the fall of

1855 and the spring of 1856. I think, as to whether it was a reasonable price of $6000, paid by libellants in spring of 1856 for her, would depend upon the payments. I should consider her worth what they paid for her, in the terms they agreed to pay for her.

I could not have got over $5000 cash for her, at the time I sold her, in the fall of 1855.

Should think there would have been a difference of $1000 between her cash all down, and the terms stated in the agreement of sale to the libellants.

JAMES STEWART.

Wm. H. B. Warren now introduced by libellants.

Am familiar with the way a lead line is marked which is used on board vessels.

I used to mark the lead line at 9 feet, then at two fathoms with two straps, at three fathoms three straps, at four there is no mark, called deep at four, at five is a white mark. Have seen them without any mark at nine feet.

Never saw a lead line with a mark at four fathoms; should not know what it meant. Never saw a lead line in which all the marks up to five fathoms were all alike. Should not think it would be a correct lead line, marked all the way alike from one to four inclusive.

One man generally heaves the lead. Suppose a man when he first heaves the lead gets twain, if he probably gets a little more water, it will be small quarter twain, that is, when it is increasing gradually quarter twain, half twain, and runs up that way. If he takes particular notice, which he should do, as he heaves the lead forward, the line comes perpendicularly in front of him as the vessel is going. When it is perpendicular, he then hauls up the lead line, and in hauling it up, if the mark twain is under water, it is his duty to pay particular attention what distance it was under water, by observing how much line he has hauled up, and he will know and be able to judge also from mark then above the water, or from any other marks.

If there is a mark between him and the water, he should first observe that mark when line is perpendicular.

A man might have a line marked even foot, or every fathom; he might count them as he draws them in.

Would not count at all, but would want to see the marks in order to obtain accurate soundings on a usual lead line. Some have them marked one fathom, but mine was nine feet, as I never expected to get into water more shoal than that.

A man that knows anything about a lead line, would not know what to make of a mark at four fathoms, I should think. If a man giving a description of a lead line, should give it as marked from one to four alike, should think he did not know anything about a lead line. A man familiar with a lead line would be struck and sur-

prised to hear a description of a line with a mark at four fathoms, or that had a mark all down from and including four, alike.

Above five, deep six, no mark, and next mark is seven. I never tried the plan, or never saw it tried, to take soundings by counting the number of marks on the line as they passed through the hand.

W. H. B. WARREN.

Should not think accurate soundings could be taken in that way, in any great depth of water.

W. H. B. WARREN.

Samuel P. Scoville, sworn on behalf of libellants.

I know where the Nebraska sunk. It was from a mile and three-quarters to two miles south of the old harbor entrance to Milwaukie.

Cross-Examination.

I saw her there the next morning after she went down, about nine o'clock; the weather was calm; she was, I judge, from one-eighth to one-fourth of a mile from the shore.

The shore is a sandy beach, where she lay; should judge she was heading about north, by west.

SAMUEL P. SCOVILLE.

T. S. Boyd, sworn on behalf of libellants.

Have been sailing thirteen years on both salt and fresh water; on lakes seven years of that time, as an officer, first mate.

Have been on sail vessels, and have been on steam vessels for five years. Have been on the Pacific, Traveller, Huron, and Arctic, Ward's steamers.

A vessel's course from Chicago to Green Bay, would be north first, as far as Milwaukie. If off Kenosha four miles, and then on course for Green Bay, would put my course north half east, probably more, according to the wind or weather, which would bring me, should think, one-half a mile east of reef, abreast of Racine, as much as three miles, or over, to eastward of North Racine Point. Am very familiar with west shore of Lake Michigan. Have passed up and down them for three years past, daily, far as Sheboygan, on the Milwaukie boats.

From Milwaukie to Racine by straight course, is long twenty-five miles, and would make in addition to that, from one to two miles for the sailing course. From Racine North Point to Racine, is from three and one-half to four miles to the Piers. North Racine Point makes off into the lake from main shore; don't know how far. Reef is called three miles from Pier. Know how a lead line is made;

never saw one with a four mark; never saw one on which the marks up to five were all alike.

Would not like to depend upon the soundings obtained with such a line, unless me or some one else was particularly acquainted with these marks, and then it would take some time to count them, if getting in little water or any water.

The competency of a man to give soundings for a steamer or propeller, who on being called to describe how a lead line was made, should describe it as having a mark at four fathom, and as having all the marks alike up to five, without making any explanation or allusion to any peculiarity in construction of line used, I would not think much of it. He could not give correct soundings, except by measuring the line. After he hauled it in, he could not give correct soundings in the ordinary mode of heaving the lead. It is not a correct mode to take soundings, to undertake to get the depth by counting the number of marks that have run through your hand, and depending on such count to determine the depth.

If the lead line is properly marked, you can give correct soundings by the line coming in. No use to count the marks as they run through the hand, you want to see the line when it is perpendicular, to see the mark.

If the line is properly marked, it is no way to take soundings by counting the marks. A vessel taking a course off south point of Milwaukie, a mile and a half east of the point, south-southeast would come about a mile to eastward of North Racine Point, if her compass is right.

As a general thing, propellers going down the lake give the points a wider berth than we do in the mail steamers. The propellers generally take the outside track of us in going both ways. Have never sailed on propellers; generally calculated on a steamer to check a third, the first check we would give in a fog, in such weather and wind as described on night of 19th Oct. Would calculate that first check would check her speed about one-third. If it was so thick and foggy that we could not see a vessel twice or three times her length, would check her about one-third from her usual speed.

The precaution, I presume, would be more necessary on a propeller than on a steamboat; don't know, though; have never sailed on a propeller. If a steam vessel, coming up lake, sees a bright light two points on her larboard bow, it would depend upon the position of the vessel, might not be necessary for her to change her course, or do anything.

If he was ignorant of the course the vessel was on, it would be proper to port his wheel and keep out of the way, if she was likely to get into him. It would indicate that she was a vessel coming down the lake with the wind free. Propellers coming up the lake, in the track I have usually observed them, and beginning to haul round towards the Racine light, and seeing such a light two points

on larboard bow, as supposed, she might pass in safety in that position if they were far enough apart. In the positions of the vessels when the light of vessels was discovered two points on larboard bow, the propeller would have had no reason to believe they would come in contact, provided they were a mile and a half apart.

It would make it still safer, if they had been two or three miles apart. If a mile or half a mile off, it would be hard for a man to judge; could tell better if he was on the propeller. When a propeller is in the neighborhood of a sailing vessel, unless there is a positive certainty that you can get by the vessel's track, the best policy is to stop, in my opinion. It would be safer to have gone astern of the vessel than to cross her bows.

THOS. S. BOYD.

Allen Soper re-examined by the libellants.

The main boom of the Nebraska did not jibe at any time immediately before the collision. The hole the propeller's stem made in the brig was thirty or forty feet ahead of the stem of the propeller, at the time the main boom jibed. At the time the propeller struck us I was about half way between the taffrail and the main rigging, on the starboard side. If the main boom had been jibed clear off, while I stood there, it would have been between me and the main rigging; it might jibe and not be clear off. If the boom had jibed before we struck, I could not have seen the propeller; it would have been difficult for a man to read the name of the propeller, if it was on one side of the sail and he on the other. I noticed the boom, when it went over; was standing at the time right forward of the mainmast. I heard no inquiry or answer from propeller with our vessel, at or after the collision, as described by the master and mate of propeller.

If any such answer had been called out, from the deck of my vessel, by three or four voices, it is not possible but that I should have heard it.

There was no excitement or confusion on my vessel. Was not a mile and a half north of Racine Pier, and a half a mile from the shore at any time in the voyage spoken of.

I was not within half a mile of Racine Light in that voyage; don't think I was nearer than three miles; think we were perhaps somewhere between three and four miles from Racine Light; did not steer any course northeast or north-northeast after the collision. The course I did steer after the collision would have taken me on to the beach, south or inside of the point, if I had been in the place described by the captain and mate of the propeller. Did not look at the clock at the time the vessel sunk; she sunk about half-past twelve, and we were one-half an hour rolling the canvas up.

Cross-Examination.

At the time the jibing the mainsail, I stood right forward the centre-board wench, which was right forward the mainmast; had not been there but a very few minutes when it jibed; vessels were close together when mainsail jibed; the vessel was dragging along around the propeller's stem, she had way on her; thirty or forty feet from the propeller's stem.

My vessel bounded far enough to jibe our mainsail when the propeller struck us; she did bound off, might have been ten or twelve feet; that threw my stern in towards the propeller, so that she did not go forward again more than fifteen or twenty feet, when the vessels came together again; think she was then heading at that time northwest or west-northwest, but did not look at the compass at the time the mainsail jibed.

Adjourned to Monday morning, 9 o'clock.

Monday, February 23d, 1857.

I left Milwaukie for Chicago after the vessel sunk, I think Wednesday or Thursday. Vessel sunk Sunday night about or a little after twelve o'clock.

Mr. Turner was down to Milwaukie the day after, or a day or two after she sunk. I mentioned to him the fact and an account of the collision.

Was present during examination of witnesses on part of libellants before commissioner shortly after the collision.

The Nebraska had jibed her mainsail off Kenosha two and one-half or three hours before the collision; at the time we put her on the course north half east, we jibed her mainsail over on the larboard side; could not say who was at the wheel then; men we had just shipped here when we went out, and I had not learned their names.

Direct resumed.

We jibed her mainsail as described, because we wanted to. Have been captain of propellers as well as of sailing vessels.

I have been in Ward's steamers and propellers trading between here and Green Bay, and I never knew a lower lake propeller take the inside track of the steamboats or propellers trading between here and Green Bay.

Have seen lead lines used on steamboats, propellers, and sail vessels; never saw one with a four mark; never saw one in which all the marks up to five were alike; never knew of taking soundings by counting the pieces of leather as they run through the hand.

Should not think a man who, when called to describe a lead line and the manner of taking soundings, if he should describe his line as having a mark at four and marks all alike up to five, and that he

took soundings by counting the marks as they passed through his hands, capable of taking soundings at all: not correct soundings in that shape; might get soundings, but could not be much correctness about it; should not think a man taking soundings in that way could give them correct.

It requires a careful man of experience to give correct soundings with a lead line.

There is not any place, I think, within half a mile of the beach, and I think not within a mile of the beach, inside of Racine harbor, where a man could sound with ten fathom of line out, and find no bottom.

A mile off of the Piers, it might be seven or eight fathom.

For a half hour before she sunk, we had nothing but her topsail on, and a part of that time her topsail-yard settled down on her cap.

When we took in everything but the topsail, she was about half full of water; something in that neighborhood. In that condition, before the topsail settled away, presume she would go two or one and a half miles an hour; did not go fast enough to steer very well. From the time of collision to place where she sunk, we had been gradually reducing the sail.

ALLEN SOPER.

Edward Kelly, sworn on behalf of libellants.

Have seen the brig Nebraska a number of times.

I saw her about the middle of the summer of 1856. Have bought and sold some vessels. Should think she was worth, in midsummer, $5000 cash, or $6000, part on time, as we usually buy and sell vessels.

No difference in value of vessels between summer and fall, unless business should make a difference; they raised in price in the fall of last year.

Should think as the business increased last fall, the Nebraska would have been worth, in October last, $6000 cash value. In July and August freights were about from 2 to 3 cents, and in October they were as high as 26 cents to Buffalo. Have not the least doubt but the Nebraska would have sold for $1000 more in cash than she would in July or August.

EDWARD KELLY.

Wm. L. Fitch being duly sworn on behalf of respondents, deposes as follows:

My occupation is engineering. I was on the Oriental last season in that capacity; had been on board of her in that capacity since she came out in April, 1856.

I have been employed as engineer eight years. I left Milwaukie in the Oriental Oct. 19th, 1856.

We left Milwaukie at about one-half past six. We took tea usually about six, and we had taken tea before we left there. We were bound for Chicago, and to stop at Racine. We had freight for Racine.

We had been running at usual rate, from two to two and one-half hours after leaving Milwaukie, and it had been very dark and thick, and the signal was given slower, and in a few minutes it was given again very slow. I checked her down very slow indeed, as slow as she could be made to go and not stop. I ordered the furnace doors open, and feed on to the boilers, to keep the steam down. We had run on at this rate for about half an hour, when I went on deck. The engine-room was down in the hold, four or five steps down below the main deck. I left the greaser, the third engineer, at the engine when I went up.

I went to the starboard after gangway; I looked out and saw the Racine light. I stepped across the deck, and looked out the larboard gangway, and there I saw another light, that bore something like two points on our larboard bow. I paid no attention to it whatever, but started immediately to go below to the engine; before I got to the engine, the bell was rung to go ahead; all right was the meaning of it. I went below immediately, and stood there probably from three to five minutes, when the bell was rung to stop, and back immediately; by that time our steam had got down. We let her go a little faster than she had been going, but not with her usual full head; we wanted to economize the steam. When the bell was rung to stop and back, she was stopped and backed as quick as possible; the signal was repeated to back strong; I opened the throttle, and let her back as strong as she would. We had been backing probably half a minute, when I heard a racking sound, as though she was rubbing against a dock, or on a gravel bottom, or something of the kind, that continued until there was a concussion, as though we had fetched upon something. At the time first signal was given to stop and back, a watchman was standing right over me on the main deck. He left the main deck, run right up to the upper deck. After the concussion the signal was given to stop backing. While standing there, the watchman came back again, and said a vessel had run into us, knocked our stem off, and we were sinking.

I then looked in her hold below to see if she was making water, and found that she was not, and if the water had been rising, I could not then have discovered it at that distance from the point where the blow was struck.

We lay there, could not say positively how long, from five to ten minutes, when the signal was given to go ahead. I started her ahead pretty slow, not very fast, when I went up on deck and left the greaser in charge again. We did not fire up again before reach-

ing Racine harbor, and were probably not more than from fifteen to twenty minutes from the time we started after the collision, before we reached Racine Harbor. No further obstructions before reaching the harbor. From the time I saw the Racine light to the concussion, could not have exceeded five minutes. The engine was backing at the time of the concussion; think it had been backing about a minute; it had made some thirty-five or forty turns; was a large engine, and did not turn very fast. Could not say how fast the propeller was moving forward at the time; judging from the speed she had been making previous to the backing and the time of the backing of the engine, she could not have been going ahead very fast. From what I have seen of propellers, I should think she must have been swinging off from the vessel with her bow towards the land, when signal was first given to back. Don't know what her speed was; she might have been going three miles an hour, but not more than that. Going at that speed, should think thirty-five or forty revolutions of the wheel back, would have entirely stopped her headway.

I saw the same light after the collision, which I had seen out of the the aft starboard gangway before the collision. After the collision, when I went up on upper deck, I saw the Racine light about three points on our larboard bow, and the vessel Nebraska was then in sight on our starboard quarter about a point and a half, with her mainsail set. I saw a man with a light on her at that time, near the mainsail. I have not the least doubt it was the Racine light I saw from the aft starboard gangway before the collision. Upon seeing the Racine light, and taking into account the speed of the vessel, it having been checked, I supposed we were going into Racine all right.

I should judge the Racine light was from two to two and a half miles off, when I first saw it. It is hard telling how far a light is off, in the night. Backing the propeller at the time, would have the tendency to swing her stern into the lake, and her bow in towards the land; vessels will sometimes swing quicker that way than by the helm; in backing, the tendency would be to swing her bow to starboard.

Cross-Examination.

Our usual rate is from eight to nine miles an hour. From the first signal to go slow, it was one and a half to three-fourths of an hour before the collision. About two minutes after that, the signal was very slow, and from three to five minutes before the collision, the signal was given to proceed with usual speed; when the signal was given to back, she was probably going about three miles an hour.

After the order was given to go ahead again, she was probably making from twenty-five to thirty revolutions a minute; when she is going at her usual speed, she would make about forty-two revolutions a minute.

The speed is diminished proportionately to the number of revolu-

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The speed is diminished proportionately to the number of revolu-

tions. Have been first engineer on the lakes for eight years. The propeller, I should think, was about two hundred and fifteen feet in length. Never tried to stop a propeller when under full headway. When going at rate of three or four miles an hour, I should judge she could be stopped in once and a half her length by reversing her engine. Unless an engineer understands his business in reversing the engine, it sometimes catches on the centre.

It was a white light I first saw from the aft larboard gangway, and about two points over the larboard bow. I did not notice it as I did the Racine light, because I did not think it was going to trouble us.

The light was not very distinctly visible; could not tell its distance; did not, when I went on upper deck, go forward on the deck; think I did not see land; was on deck probably two minutes; there was no catching of the engine when it was reversed; probably it was a minute before the collision before the bell rung to back, and from then to five minutes before that, the signal had been given to go her usual speed. No order given, between the signals, to go with usual speed, and the signal to stop and back; but I heard the whistle sound between those two orders, near the time when the order was given to stop and back. The fireman had just fed the furnaces, and was coming up out of the hold, when the signal had been given to check her first. In ordinary weather we have to feed the furnaces every fifteen or twenty minutes, and oftener in rough weather, but not so frequently when going into port. I should judge the vessel was half a mile off from us, when I saw her after the collision, on our starboard quarter.

The Racine light is a revolving light, and it closed in immediately after I got to the starboard gangway. I believe it revolves once in three or four minutes. From my position on the vessel, probably the difference between those two lights, when I saw them, was perhaps from to three to three and one-half points. I saw the starboard light first, and then went opposite, in two or three minutes, to look out of the larboard gangway, when I saw the other light. I then went below. The only observation I made of the Racine light was while I stood in the starboard gangway; I was there long enough to see it revolve; don't know precisely how long, but probably two or three minutes, not over five minutes; that was while she was under check that I was looking out there.

Direct resumed.

The machinery on the propeller was in perfect order; it was on her second trip since she had been laid up and repaired.

Her machinery worked smooth when the orders were given. Some person had a light near the mainsail of the vessel when I saw her after the collision. I saw her main boom. If the propeller is going

forward at rate of three miles an hour, by opening her throttle she will turn pretty brisk; her engine will revolve pretty brisk. The propeller was loaded with merchandise, and the ease of turning the engine would depend somewhat upon the load, whether she had a full cargo or was light. Her engine was working quite free at the time of the concussion.

This engine was a large one in proportion to the size of the propeller; it was thirty-seven inch bore, and five feet stroke.

WM. L. FITCH.

Monday, February 16th, 1857.

Richard C. McKitrick, being duly sworn for the respondents.

I was thirty years old yesterday; am a sailor; have been since 1837; have sailed as wheelsman on steamboats, before the mast, and as master of vessels; as mate on steamboats and propellers.

Was on the Oriental in Oct. 1856, as second mate; left Milwaukie on 19th Oct., about half-past six in evening. After the boat got straightened around from the dock, and had seen to the coiling up of the ropes around, I then turned in. I heard no more until I was waked by something like a grating along our forerigging, on the larboard side. Could not get out of my room to see what it was, but knew it was some kind of a collision that had taken place; directly that had passed by, the grating had gone by the rigging, there was a concussion, and about the time of the concussion I had just got adeck, and a vessel was passing just across our bows; she passed from the larboard around to the starboard; she passed along around us, rubbing our bow, and stood down the lake.

Propeller was struck on stem; the raking on the rigging bent the sheer-pole up of the propeller on the rigging; seemed as if something hooked on to the sheer-pole, and pulled it around; sheer-pole about eight feet above the promenade deck, probably a foot higher than the hurricane roof; it might have been fore-brace, or reef, or something else, which caught the sheer-pole, and bent it around. The stem of the propeller was slewed right around, and turned out of its place from foot to starboard; the plank was sprung off three or four feet above the water on starboard; think five or six plank were sprung off; no plank sprung from her larboard side that I saw.

The stem of the propeller was from light-water mark, straight up and down, what we would call a straight stem. First thing after the collision I looked over the bow to see what damage was done to us; from the looks over the bow I thought that we were all split open, so that we would go down; think I told the captain we had better get into shoal water, that we were all split open; then I went below to see if she was making water. I see she was not, but very little; there was but very little coming in. Went on deck, and reported that we were not making much water. We then went ahead;

captain rung the bell to go ahead on the engine. We then went on up to Racine dock; think we were from 15 to 20 minutes reaching Racine dock. I saw Racine light, and the lights on the spring piers of Racine dock, about the time we started, after the collision. Our deck was about thirteen or fourteen feet from the water, may be more, may be less; can't be much less with the load we then had on. Racine light is a revolving light; don't think I would mistake it for a vessel's light. It is on an elevation above the water; The bank is pretty high there, and the lights must be raised twenty-five feet. It is only a guess at that. I mean twenty-five feet above the bank. I think, from my judgment of such things, the propeller was not under headway at the time of the collision; my reasons are this: if the propeller had gone into the vessel, the way the wind was on the vessel, then, the way the vessel was then, if the propeller had had way on her, then she would have pushed her directly to windward, and held her there, because the greater portion of the vessel was on the larboard side of the propeller; the pressure on the vessel's head canvas would about or more than compensate for the pressure of the vessel against the propeller; for the extra proportion of the vessel on the larboard side of the propeller, and the vessel without any centre-board down, would be easier to shove her to windward than if she had her centre-board down; she would not displace so much water. When I came on deck, her engine was still backing, and she exhausted freely; that indicated that she was backing strong. Should think we were from five to ten minutes there after the collision before started to go ahead.

After the vessels passed astern of us on our quarter starboard, think I did not see her again. I did not notice much about her appearance; had as much as I could attend to about our own vessel. It was the first-mate's watch; the captain was on the pilot-house when I came on deck.

Propeller did not go very fast after we started, after the collision; think she was going at rate of under six miles an hour than over it, from the steam she was carrying; her steam had got too low.

After we started ahead, I looked at propeller's lights: they were good; she carries three signal lights, one white, one red, one green; larboard light is red, starboard light is green, and the head light is white, on top of pilot-house. The other lights were on the arches abaft the white lights. The lights were what are called the French lens; they were good lights; they are supposed to be the best lights we have on the Lakes. The insurance companies, I believe, all like them the best.

If a vessel was off two or three points on our starboard bow, I think the vessel could not see our red light; not very positive, but think she could not; she ought to have seen from that point (two or three points on our starboard bow) one green and one bright light. At the time of the collision there was a fog on the water; not very

thick; it was a fog clearing up; the fog seemed to be low on the water; it was settling all the time. The propeller's lights could have been seen further than the vessel's lights, because they were more elevated. The propeller came out in 1854, summer of 1854, I think. She is a tight, staunch, strong, and good propeller. She had a full crew at that time. When I came up on deck, I found the captain, the first mate, one wheelsman on deck; did not look into the wheel-house, but suppose one wheelsman was in there. Horace Barber was the wheelsman on deck; they were all on duty; there were others about on the deck; don't recollect their names. The best place for a lookout, when collision is apprehended, is on the pilot-house. Sailing in a fog on soundings, the best plan is to have one man on pilot-house and one at the lead. A man can look all around without anything to obstruct his view from the top of the pilot-house, by keeping out of the range of the spar. The fog, at the time of the collision, would not prevent seeing lights two or three miles off.

Cross-Examined.

I have sailed on all the Lakes, except Superior; have had considerable experience on the west shore of Lake Michigan. I was one season on the steamboat United States, one season on the Great Western, and one on the Nile. I went to sleep after I turned in after leaving Milwaukie. I first waked up from the noise of the grating in the rigging. When I first came on deck, the propeller's stem was on to the starboard side of the vessel, forward of her beam, not quite at right angles; the main boom of vessel was laying against us. When I first noticed it on the vessel's starboard side, and on our larboard side, did not at that moment notice any light on the vessel, but noticed one when she passed around us; as soon as she got around, and while she was close by us. We got to Racine about 10 o'clock; looked at the clock in the cabin when we got along by the side of the dock at Racine, and then think it was about ten o'clock; it might have been five or ten minutes after; not positive as to exact time within five or ten minutes; I recollect distinctly it was not ten minutes after ten. I suppose we calculated to carry Buffalo time. The clock was set by the steward, and I suppose was Buffalo time. There were several lights on the piers at Racine; globe lamps and others; think there was a red light on the pier we went to; think there were more than half a dozen lights on all three of the piers that I saw, immediately after the collision. I saw the land immediately after the collision, and I then saw the Racine light, I should think bearing three points on our larboard bow. Think I saw the land before the lights; saw the land above the point; south of the point saw trees: this was before we had rung to go ahead. The land was from half a mile to a mile off; there was a little fog settling on the water; saw stars after she got to the piers.

It cleared entirely up after we got to the dock; think we were about a mile south of the point at the time of collision, and just before we started again for Racine. Some call Racine Point three, some four miles north of Racine; I think about three and one-half miles. I was on deck all the time from the collision until we reached Racine piers, except a few moments I went below to give some orders. The propeller changed her course from the time of the collision before she reached Racine; saw her swinging directly after we started after the collision, and presumed she was going for the light. The Racine light bore about three points on our larboard bow about the time we started ahead after the collision.

Direct resumed.

The effect of reversing the engine at the time of collision, would have effect of turning her bows to land and her stern to the lake. Generally steer in from the point to Racine south-southwest, depending upon our distance from the point; I suppose we might, if running close, run south by west.

Racine Point projects out into the lake, I should think half a mile; think it would be safe to go within about a quarter of a mile of the point generally, when we are going into Racine. In going by the lead in thick weather, we go closer than at other times. Propeller was loaded with merchandise; we had taken off a little at Milwaukie.

Plot shown gives a correct idea of the lay of the shore, and of the point at Racine. In any kind of decent weather, we have usually one man at the wheel, and in heavy weather we have generally two. You can manage the wheel of a propeller more easily when she is going slow, than when she is going fast. The propeller is not what is called a hard steering vessel. She is a large boat. In approaching port, it is customary to have more than one man at the wheel. When we get within half a mile of the pier, it is customary to do so. When the vessel is going slow, one man can heave her wheel right over.

In saying the propeller had a full crew, I meant that she had a full crew of officials, and men to handle a boat outside; a competent force to handle her lines, &c.

R. C. McKITRICK.

Moses H. Collins, sworn on behalf of the respondents.

Have been a sailor seven years; have been before the mast in vessels, wheelsman on propellers and steamboats, second mate of propellers and steamboats, and first mate of propellers, and of one steamboat; have sailed between Ogdensburg and Chicago, between Cleveland and Oswego, Buffalo and Toledo, Buffalo and Detroit, Buffalo and Chicago. Have been some to the Sault. Have been on

the Oriental since April 21st, 1856, as first mate; on 19th of October, 1856, we left Milwaukie, about one-half past six, and ran (it was my watch on deck) until about half past eight. Barber, the wheelsman, was at the wheel. I sent the other wheelsman in to relieve him (his name is Fellman), to have Barber heave the lead. The captain had been in and out during the time since leaving Milwaukie. Soon after Barber commenced heaving the lead, captain came out and stayed there, from his room in the cabin on to the deck. The boat was checked down, and soon after she was checked again, to go still slower; should think very near nine o'clock. I went aloft to see if I could see over the fog. I had been up there probably fifteen minutes, when the man at the lead sung out, half two fathom. Captain spoke and said, I think we must be abreast of the point, and wanted to know if I could see anything; told him I did not see anything of land, but that I heard the surf on the beach; soon after this I saw Racine light, and then I came down on deck. Captain wanted to know of me how the light bore from us. I told him about four points on our staboard bow. I could not see the light from the deck when I first came down, after we got sounding of half two. While I was aloft the water deepened, after that to half three and four fathom. After I had been on deck a few minutes, I saw Racine light. The boat was headed for the Racine light. We run along a few minutes longer, and I saw a light on our larboard bow; a white light; it was between two and three points on our larboard bow. I asked Captain Steel if he saw the light; the captain was on the pilot-house, where he had been from the time we checked her speed; he said he saw the light.

I said that should clear us any way; he said, certainly, he thought so too. I stood there three or four minutes only, and then went aft to call the men on the larboard side. I met one of the deck hands at the cabin door, and told him to tell the watchmen to call the men to get the lines ready to go into port, port of Racine; just as I got through talking with him, I heard the whistle blow. I then run out on the forecastle deck, and saw the vessel about five or six points on our larboard bow, keeping away from the wind, for us at the time, until the wind was on her larboard quarter. I said to captain, you had better stop her; he said that he had, and that she was a backing. The vessel came down. Her yards and main boom hit the propeller's side, before her head did; some of her gearing caught on the sheer-pole of our larboard rigging; she passed by, and pulled the sheer-pole around off. She struck the propeller on the larboard course, and side of the propeller's stem, and knocked her stem around to starboard, and started off four or five of the plankhead ends of the starboard side. Wind being on the larboard side, her mainsail laying up against our larboard bow, she broke around the stem and propeller's bows, and went off down the lake. The first thing after she got clear of us, and broke round our bows, I hailed the vessel, and

asked them if they was hurt bad, or wanted any assistance; I heard in reply, "Go to hell, you dirty sons of bitches," from three or four voices. Captain also hailed them about the same time I did, and got the same answer that I did. I said, then I guess they ain't hurt very bad; we had better look to ourselves, to our own boat. I hung a lamp down over our bows.

I thought at the time and spoke we are all stove in forward. Captain Steel said, Cut the jib off from her, so that we can sweep her bows. Wheelsman went to work and cut it off. While the wheelsman were cutting the jib off, I went below into the fore pique to see if we were making water. I found she was a very little. I came on deck again and told the captain I did not think there was any need of sweeping her of her jib, for we wan't leaking much. We then went ahead and went to the Racine spile dock. After collision think we remained from ten to fifteen minutes before we started for Racine dock; could not tell the time exactly; I was pretty busy. After hearing the whistle blow, should think the brig was from four to six times her length off from us. I noticed she jibed her mainsail just before she got to us. When we saw the vessel approaching us five or six times her length, we could not have shifted the helm of our vessel so as to have avoided the collision. We were then in shoal water, running the land as close as we dare in three fathom water, a little over, and if we had a ported our helm, we should have got on to the beach before we could have got clear of the vessel. If we had kept on our course, the vessel would have hit up about mid ships, a little abaft the beam. I think the way we did do, was all we could do under the circumstances; we could not starboard our helm and clear her, and we dared not port our helm to clear her. From the first time I saw the light on our larboard bow, the brig's course was changed before the collision; her course was changed so much that she jibed her mainsail over. Before the collision the propeller had stopped and backed, which had changed her position some; it had slewed her stern more into the lake. If the brig had not changed her course from the time we saw her, there would have been no collision; she would have passed clear of us; at the collision we were not over half a mile from the land; don't think we were that. The course of our vessel was south-southeast from Milwaukie to Racine Point. In rounding the point and heading for Racine light, the course is changed four points. In one position passing the point the light of a vessel could not have been mistaken for the Racine light, because I had seen the Racine Light revolve several times; the vessel's light was a steady clear light. When I first saw the lights of the vessel, I suppose she was a mile or a mile and a quarter off from us.

It had been very foggy before we got to the point. It begun to clear up and light up a little just as we passed the point; then it was thick on the water, and thinner as we got up from the water.

We could not see a vessel's light as far as if it had been clear. In

a clear, dark night, I judge I have seen lights of vessels as far as five or six miles. At this time, about time of collision, don't think a light could have been seen more than a mile and one-fourth or a mile and a half.

I was looking out for lights, and looking at the Racine light at the time I first saw the light of the vessel on our larboard bow. From my judgment, I should think I could see a vessel's light at that time from one and one-fourth to one and one-half miles off; think that was about the distance at which I saw the vessel's light.

Our vessel was steering before the collision south-southwest; at the time of the collision, I think our vessel was not in motion, because I have seen her go along beside of piers with the same way, or as much as we had on at the time we commenced backing her, and stop in her length. The wind was south-southeast that night.

Cross-Examination.

Have sailed between Chicago and Buffalo from 23d July to 10th of September, in Lady of the Lake, propeller; seven years ago as wheelsman on propeller prior to that; the same season I was before the mast, in trade between Chicago and Green Bay, on the Wabash; that was the first of my sailing.

From the year 1850 down to 1853, I was not on Lake Michigan. In 1853 I was on Queen of the Lakes, from July to December, running between Chicago and Buffalo. In 1855 I was mate of propeller Michigan, between Ogdensburgh aad Chicago two months; rest of the season I was two trips up here on propeller New England. I was mate of the propeller Edith year before last, between here and Buffalo, and mate of the Oriental last season. That is all of my experience between Buffalo and Chicago, and of the coast and places between them. I am twenty-three years old. I commenced sailing when I was sixteen years old. We left Milwaukie about one-half past six o'clock; I knew from the time we always took tea, six o'clock being the hour, and also from my watch, which I looked at when we left Milwaukie. We started from Buffalo on that trip not over a week previous to the 19th. My watch was not with Buffalo time when I left there; varied thirty or forty minutes.

Could not say what man was at the wheel when we left Milwaukie. We had four wheelsmen on board. It was my watch when we left Milwaukie. Wheelsman was under my orders; I gave him his course south-southeast. Had a binnacle on deck, and a compass in the cabin. We were going south-southeast by the compass in the cabin, and south by east by the one on deck. We had run on that course from the time we started until I called Barber out of the pilot-house, about half-past eight o'clock. Our average rate of speed was from eight to nine miles. Captain Steel gave the signal to check down soon after I called Barber out. When the signal was given to check

speed I was on the forecastle deck, forward of the pilot-house. The captain was at the bell, on top of the pilot-house, from the time he checked the boat until we got to Racine. That was before I went aloft that the captain went on top of the pilot-house. The other man had taken the wheel before the vessel was checked. I supposed the other wheelsmen gave the course to the man who took the wheel. The vessel continued on the same course. After the man took the wheel, I asked him how he was heading; he said south by east. Anthony Fellman was the man who made that reply, and who had the wheel at the time of the collision. Collision took place about one-fourth before ten, and Fellman had the wheel from one-half past eight o'clock. He had just taken the wheel a few minutes before the order was given to check. She was kept under the check until she was stopped and backed.

I did not have any signal for her to resume her usual rate; and besides, we could not get correct soundings if she was running fast.

When Captain Steel went on to the pilot-house he said, I will check down, and after that she did not go so fast.

Don't think the bell could be heard on the pilot-house, with the wind as it was, and cannot hear it in the forecastle deck when she is full of freight, but when she is empty could hear it then.

Captain had been in and out up to the time he checked her down, and was standing on the pilot-house up to the time of the collision. He had not been standing on pilot-house but a short time, perhaps ten minutes before I went up aloft. I had not seen the land before I went up. Had not seen anything since I left Milwaukie Point, south point. I went aloft about nine o'clock. I judge of the time from the time I had changed the wheelsman, and called him out to heave the lead. It was about a half an hour after that, that I went up aloft. North Racine Point is about twenty-one miles or twenty-one and a half miles from Milwaukie. The lead had been heaved before I went aloft. Horace Barber heaved it; he is here. Don't know how many times the lead had been heaved before I went aloft. We had got 8, 7, $\frac{1}{2}$6, 6, and $\frac{1}{2}$5, before I went aloft. When I was aloft we got to shoal water. We were then in a south-southeast course, by the cabin compass, being the same course we had steered since leaving Milwaukie Point. I was up aloft, I should think, fifteen minutes; could not say positively as to the time. Captain had direction of man at helm while I was up, and from the time he came on deck. I took hold and hove the lead once or twice myself during the time it was being heaved.

I saw Racine light just before I came down from aloft. It appeared, at that time, to be a little over three miles; I could just see it revolve; it had just begun to light up a little. I staid up there long enough to see it revolve two or three times to make sure that it was the Racine light. Did not see the pier lights at that time. I saw the light revolve just about the same time that it takes the Racine light

to revolve. Think it revolves once in about three minutes, but am not positive.

Adjourned until to-morrow morning.

Tuesday, February 17th, 1857.

The Cross-Examination of Moses H. Collins resumed.

Left Dausman's pier, at Milwaukie, about half past six o'clock. To get out of the harbor, and to get fairly started from Milwaukie on our course, takes about ten minutes. Our rate of speed was between eight and nine miles an hour after leaving Milwaukie. Man having charge of engine would be more likely to notice the speed accurately, as he would know the number of revolutions.

After order was given to check, she went very slow; could not tell exactly how slow; think she was not going over three miles an hour at outside; don't know as I noticed any difference in rate of speed from that time up to time of collision; if there had been a perceptible difference in her speed, should have known it, I think. The course of the vessel was steady south-southeast from the time the vessel took her course until we saw the light; think she was hauled up perhaps a little as we deepened the water, just before we saw the light. From the south point of Milwaukie we steered south-southeast until we supposed we were abreast of the Point of Racine; when I think as we deepened the water, I think she was hauled in a little as we passed Point. Think I heard an order to haul her in more to the shore just after we had got by the shoal water.

I stated before that she was so close in shore that we could not go any nearer. I stated that we had just passed out of ½2 into 3, before I came down from aloft. Before we saw the Racine light, and just as we passed out of the shallow water, we headed more toward the shore, and then her course was south-southwest by the true compass; that was, I should think, about fifteen or twenty minutes before the collision. I had not seen Racine Point when either of those changes were made in the course of the vessel. I looked at the compass and saw that we were headed, after the last change, southwest by south, and her true compass in the cabin south-southwest; that course was not changed again to my knowledge; know the vessel was kept on that course because I was on deck, and the vessel did not swing off any, and the light was directly ahead. The variation of a propeller without sails in the night on her course, is not more difficult to discover than that of a sailing vessel, I think.

The captain gave the order to the man at the wheel to take the south-southwest course. Between the taking of this course and the collision, I was on the promenade deck, forward the pilot-house, on both sides and in the middle; stayed there until after I saw the vessel's light. From the time she had got on her course south-southwest, it was not more than five or six minutes before I saw the ves-

sel's light; I then got as near the vessel's centre as I could, to see how much the light was on her larboard bow. She was two points anyway on our larboard bow. I stayed there until I was certain the vessel was going to clear us; a few minutes only.

It was a white light on the vessel. I judged she was coming down the lake before the wind; don't know what course she was steering; did not pay any attention to her course; never notice the course of any other vessel except the one I am in; I can tell whether a vessel is on the wind or before the wind by her signal lights, or on what tack she is on if she carries the proper lights. In the daytime I can tell more than that, but not in the night. I supposed from her lights that she was coming down the lake before the wind; I then started to go aft to call the men, and got as far as the companion-way, when I met one of the men I was going to call. The companion-way is aft of the end of the forward cabin, forward of midships. I told him to go down and tell the watchman to call the men up to get the lines ready. I was facing aft when I met the man.

I did not see the light to the larboard from the time I started to go aft until I heard the whistle. At time I started to go aft, our vessel was heading south-southwest. I talked with the man a short time, just long enough to tell him to go and call the men up; I then heard the whistle, just as I got through talking with the man, and went forward. Sometimes we sound the whistle as we approach the pier at Racine; we do, unless there is a light on the dock. It is customary to blow the whistle when we approach the dock. I have sometimes awoke up crews by blowing the whistle when approaching vessels. It is not customary in a propeller to blow her whistle when approaching a vessel unless we are close to a vessel, then we do blow it.

Could not tell the number of times I have seen propellers blow her whistle when passing vessels; have done it several times myself. When approaching or passing a vessel on the lakes, it is not customary to blow her whistle. When the whistle blowed, I went forward on the promenade deck; I was on that deck before, and only went forward of the pilot-house. Found the captain on the pilot-house. When I first saw the vessel after whistle blowed, and before the mainsail jibed, she was heading I think north half west. Before the vessel jibed, I should think she was between four and six times her length off. She kept right away gradually until her mainsail jibed. She could not have gone more than three times her length, a little over half the distance, before her mainsail jibed. When her mainsail jibed she was I should think about twice her length off, perhaps a little more. The first that struck us was the yards or main boom; they both, both yards and the boom, hit us before the hull struck; the main boom struck the bulwarks first; might have struck our plank-sheer. I saw the main boom hit our larboard bow abaft our fore rigging before the hull struck. I think the yards hit our rigging and took our flag-pole; the foreyards took our flag-pole and broke it off. Then

came the collision on the vessel's starboard side, between the vessel's main and fore rigging.

Witness here makes a chart of the positions of the vessels at time of collision, marked "three." The brig heading to the westward of southwest, and the propeller heading southwest by west or west-southwest. After the collision, the vessel passed around our bows on starboard side of the propeller. The head canvas of vessel kept her away.

Witness here makes another chart, marked 4, of positions of vessels just after she passed around our bows. The brig was going east of north. Our vessel steering towards the land, to the westward of northwest, a little more to westward than in time of collision. When I was aloft and saw the Racine light, I did not see vessel's light. About the time of collision, I saw the land about one-half a mile off, about the time I started to go aft to call the men. Should judge the land I first saw was about a mile and a half north of the Spile Pier. The vessel was between the two positions of charts 1 and 2 when I told the captain he had better stop. Think the propeller was under headway at that time; I did not drop my lead over to see whether she was or not. Struck the propeller on larboard side and larboard corner of propeller's stem. Vessels did not hang together after collision except as the wind kept the vessel on to us; the wind held her mainsail against our larboard bow and dragged around the propeller's bows. Don't know whether the stem of propeller made a hole into the brig.

The vessels did not appear to hug together after the collision; they did not remain together any length of time, but passed right off. Did not notice whether main boom of vessel jibed back or not, after the collision, after she got clear of us. Think the yards of the brig were very near square before the collision; know of no change in the position of the yards, either before or after the collision. After the vessel passed off around our bows, they passed down the lake. I suppose the last I see of them they passed off on our starboard side. I hailed them just as they got clear of us; the captain also hailed them just about the same time; there was two or three or four voices shouting about the same words from the vessel when we hailed her. We were laying there from ten to fifteen minutes, and afraid to start until we could see whether we were leaking. The brig was out of sight when we started, or at least I did not see her.

It was half an hour or better, from the time of the collision, before we got to Racine. Takes half a minute to shift the helm of propeller. At that speed she was going, we could shift her helm before she could go once her length. If we had ported her helm, we would have got on to the beach; because we run so close to the point. There are two courses in steering from Milwaukie to Racine; one in clear weather, is to keep off further than we were from the beach, and in foggy weather, when running around there under a check and

sel's light; I then got as near the vessel's centre as I could, to see how much the light was on her larboard bow. She was two points anyway on our larboard bow. I stayed there until I was certain the vessel was going to clear us; a few minutes only.

It was a white light on the vessel. I judged she was coming down the lake before the wind; don't know what course she was steering; did not pay any attention to her course; never notice the course of any other vessel except the one I am in; I can tell whether a vessel is on the wind or before the wind by her signal lights, or on what tack she is on if she carries the proper lights. In the daytime I can tell more than that, but not in the night. I supposed from her lights that she was coming down the lake before the wind; I then started to go aft to call the men, and got as far as the companion-way, when I met one of the men I was going to call. The companion-way is aft of the end of the forward cabin, forward of midships. I told him to go down and tell the watchman to call the men up to get the lines ready. I was facing aft when I met the man.

I did not see the light to the larboard from the time I started to go aft until I heard the whistle. At time I started to go aft, our vessel was heading south-southwest. I talked with the man a short time, just long enough to tell him to go and call the men up; I then heard the whistle, just as I got through talking with the man, and went forward. Sometimes we sound the whistle as we approach the pier at Racine; we do, unless there is a light on the dock. It is customary to blow the whistle when we approach the dock. I have sometimes awoke up crews by blowing the whistle when approaching vessels. It is not customary in a propeller to blow her whistle when approaching a vessel unless we are close to a vessel, then we do blow it.

Could not tell the number of times I have seen propellers blow her whistle when passing vessels; have done it several times myself. When approaching or passing a vessel on the lakes, it is not customary to blow her whistle. When the whistle blowed, I went forward on the promenade deck; I was on that deck before, and only went forward of the pilot-house. Found the captain on the pilot-house. When I first saw the vessel after whistle blowed, and before the mainsail jibed, she was heading I think north half west. Before the vessel jibed, I should think she was between four and six times her length off. She kept right away gradually until her mainsail jibed. She could not have gone more than three times her length, a little over half the distance, before her mainsail jibed. When her mainsail jibed she was I should think about twice her length off, perhaps a little more. The first that struck us was the yards or main boom; they both, both yards and the boom, hit us before the hull struck; the main boom struck the bulwarks first; might have struck our plank-sheer. I saw the main boom hit our larboard bow abaft our fore rigging before the hull struck. I think the yards hit our rigging and took our flag-pole; the foreyards took our flag-pole and broke it off. Then

came the collision on the vessel's starboard side, between the vessel's main and fore rigging.

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sounding, the boats I have always been in, always keep close to the beach to get soundings in the shoal water. Be sure to get inside of the reef off Racine. The reef lies right abreast of the dock, about three or three and a half miles south of the north Point, the north end of it. It is not customary, or proper, or seamanlike, to go so close to the beach in rounding that point, that a vessel cannot port her helm, without danger of getting on to the beach. Thinks the Racine light was three and one-fourth miles off, when we first saw it. In a straight course from the point to the Racine light, which would be in a course west of south, you would not pass over a fourth of a mile from two and a half fathom of water.

Our vessel drew over eleven feet of water aft, between eleven and twelve feet.

The average depth of water on that line I don't know. I have sounded it, and found three, three and a half, four, and four and a half fathom of water on it. Racine Point runs out a half a mile or so. Vessel had been running a short time on two and a half fathom; just as I supposed we were passing over the spit that puts off the point. Could hear the surf on the beach at that time; was aloft when I heard the surf on the beach; had not seen Racine lights then; only heard the surf a short time before I saw the light, not but a very few minutes, but did not see North Point at all. When I was aloft, it was the first time I had heard the surf on the beach. The wheelsman, Fellman, told me we were heading south by east, by the binnacle compass, when he first took the wheel calculated to be when we were north of the point.

Direct resumed.

I heard no orders given to the wheelsman by the captain, from the time I first saw the larboard light to the time of the collision.

Cross-Examination resumed.

Did not hear any order given on our vessel, from the time I saw the light to the collision, to port or starboard the helm. We had been on our course south-southwest for Racine light, but a very few minutes before I saw the vessel's light on our larboard. No protest was made by our vessel after we got to Racine, or after we got to Chicago, to my knowledge.

Never had any conversation with Mr. Daliba or with Mr. Miller, in relation to this matter, that I recollect.

M. H. COLLINS.

Squire Alexander sworn on behalf of the respondents.

I am a master mariner; have been engaged sailing 23 years, from man before the mast, up to master, by regular gradation; have been master something like ten years; have been on lakes 18 years, and

between Buffalo and Chicago 17 years; am familiar with the coast from Milwaukie to Racine; know where North Racine Point is, and reef in front of Racine. North Point is about north-northeast, from 4½ to 5 miles from Racine; the reef is about three miles due east of Racine. Have been master of propellers six years. Usual course of propellers south-southeast from Milwaukie South Point to Racine North Point, sailing from Milwaukie, to stop at Racine in the night time, with a fog on the water, so as to make it difficult to see land. When leaving Milwaukie we note the time particularly, also the rate of speed, and from these two calculate at what time we arrive at north point of Racine; there we heave the lead for soundings; if we strike deep water we keep in, generally go around the point in two or three fathom of water, and keep the lead going, and run by soundings until we find the pier, or get up to the pier; generally have a man aloft; many times we can see over the fog, when we cannot distinguish anything from the deck. In passing the point look for the land and light, or any object which may be visible; sometimes see the church steeples. In the night we would look for the lights in the city and the light-house. In rounding the point, in from two to three fathoms, the vessel's course would be changed about four points. In that depth of water, in foggy weather, the vessel's speed would be checked while we were sounding. The Racine light could not be seen, any great distance north of the point, by a vessel in that course and depth of water; the point would shut it off; but it would depend upon what the range was, how far it could be seen. In making 2½ fathom of water, rounding the point, the light could not be seen until abreast of the point. Chart shown to the witness. Think it represents correctly the shore at and around the Point of Racine. If, after making the Racine light, and heading for it, in sailing as described, with the wind south-southeast, I should discover a white light two points on my larboard bow, it would indicate the light of a vessel heading down the lake, or out into the lake, with a fair wind; that the vessel was going with the wind free. I should first get the bearings of the light, and then note its variation, to see which way it was going. If I found it coming towards us I should stop or change my course, so as to avoid its line of direction, or the way it appeared to be going.

If the light opened on us, I should keep on my course.

Sailing at rate of two or three miles an hour, and saw a vessel coming directly towards us, from five to six times her length off, I might stop and back, in order to back away, or I might put on a full head of steam to try to avoid her, to get out of her way. Going two or three miles an hour, vessels approaching in that way, and at that distance off, and the wind about a six-knot breeze, it might be best to stop and back in that case. The propeller backing would tend to back her stern around to port, which would tend to bring the two vessels on a line, and to come along the side of each other. If the

sounding, the boats I have always been in, always keep close to the beach to get soundings in the shoal water. Be sure to get inside of the reef off Racine. The reef lies right abreast of the dock, about three or three and a half miles south of the north Point, the north end of it. It is not customary, or proper, or seamanlike, to go so close to the beach in rounding that point, that a vessel cannot port her helm, without danger of getting on to the beach. Thinks the Racine light was three and one-fourth miles off, when we first saw it. In a straight course from the point to the Racine light, which would be in a course west of south, you would not pass over a fourth of a mile from two and a half fathom of water.

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Sailing at rate of two or three miles an hour, and saw a vessel coming directly towards us, from five to six times her length off, I might stop and back, in order to back away, or I might put on a full head of steam to try to avoid her, to get out of her way. Going two or three miles an hour, vessels approaching in that way, and at that distance off, and the wind about a six-knot breeze, it might be best to stop and back in that case. The propeller backing would tend to back her stern around to port, which would tend to bring the two vessels on a line, and to come along the side of each other. If the

propeller kept on ahead at that slow rate, there might be danger of the vessels coming into her in such a breeze six-knot.

If a vessel sailing north half east, with a six or seven knot breeze, south-southeast should make a propeller's red light three points on her starboard bow, 3½ miles distant, propeller going at rate of two or three miles an hour on a course south-southwest, I should think there could not be a collision; think it would be impossible to get them together, unless the vessel hauled up by the wind. Don't see how a collision could occur unless the course of one or the other was altered materially.

If the course of the propeller was changed southwest, and the vessel keep on her course, should think the rate of the propeller's speed was so slow that it would avoid a collision; should think the vessel was going so fast as to avoid the propeller at a point where they would be likely to intersect.

If the red light of the propeller opened on the vessel's starboard bow, it would indicate that the brig was passing by the line or course of the propeller, and that the propeller was passing under the stern of the brig, and thereby lessening the chances of a collision. I mean by opening, passing more abeam.

If the vessel is on her course north half east, same wind and same speed, and the speed of the propeller the same, say two or three miles an hour, if the propeller when once or twice her length from the vessel, is abreast of the fore-rigging of the vessel heading due west, I should think there could be no collision under the circumstances; that the vessels would pass the point of intersection before there would be a collision.

If the vessel was a mile and a half from the propeller there could, under the same circumstances, be no collision.

If the colored lights of the propeller are properly screened, they could not be seen at the same time, when at a distance of 2½ or 3 miles, two or three points on the starboard bow from the brig. They could only be seen directly ahead from the vessel when the propeller would be heading directly for her. The moment you alter the position one or two points either way on the bows, it shuts one or the other of the colored lights.

If a vessel is on a course north half, with a six-knot breeze south-southeast, putting her helm hard starboard, in going two hundred yards she would change her course from four to six points; she ought to turn nearly half around; she would probably turn quicker with that breeze light than if loaded.

S. ALEXANDER.

Wednesday, February 18th, 1857.

Horace Barber, sworn on behalf of respondents.

Am twenty-eight years of age; am a sailor; have sailed eight

years; was on the Oriental on 19th of October last; was at wheel after we left Milwaukie; was at the wheel half an hour; come on at eight, and stayed at wheel until half-past eight.

The mate called me to heave the lead; I did it, and found about eight fathom water; this was about half-past eight. Shortly after it began to shorten the depth, and kept shortening gradually until it got to 2½ fathom. After it begun to deepen until it got to four fathom, I heard Mr. Collins say from the rigging he saw Racine light; a short time after could see it from the deck, pretty well off her starboard bow. Afterwards heard Mr. Collins ask the captain if he saw that light on larboard bow. We were then in 3½ fathom, or somewhere thereabouts. I was still heaving the lead. I looked around and saw the light on our larboard bow. Mr. Collins spoke shortly after, and said that was going clear of us; said it was a vessel coming down before the wind. I did not pay any more attention to it until I heard the whistle blow. When I first saw it, it seemed to be about two points off our larboard bow, about 1½ or 2 miles off; might have been less, might have been more. I heard the whistle blow once or twice; was still at the lead, and Mr. Collins came and told the captain he had better stop her, and captain said he had stopped her, and was backing her.

I looked then and saw her coming, two or three points off our larboard bow, right on to us; thought she was going to strike us forward, and I went aft to get out of the way. I got aft, and felt her raking. Turned around and see her by us, and then felt a shock. I came forward, and saw her lying partly across our bows, in a triangle form, with her mainsail over on her starboard side, and on our larboard bow.

The propeller backing, I suppose, and the vessel got around our starboard bow and got under motion and got away.

Mr. Collins asked them if they was hurt much, and Captain Steel both, and different voices told them to go to hell you sons of bitches. Set me to cutting her jib adrift to sweep her.

Second mate took a light and went down to see if we was making water, and came up and said, we wan't much. Just before the collision I left the lead, and she was going very slow then, slower than when she went around the point. At the time of the collision, think the time when the captain rung to back her, had been long enough to have stopped her headway. I was on the starboard side forward when I was heaving the lead. From the time of the collision, we lay there some time, and after we got under way, it was not more than 15 or 20 minutes before we got into Racine. With the motion the boat then had, one man could work her wheel; it worked light in that slow motion. Had four wheelsman aboard the propeller; two of us used to be on watch together, especially in the night; one at the wheel, and the other on the lookout; that is when we were out on the lake outside. When I was heaving the lead, it was thick and smoky around the point, until we got around the point, when it came off clear.

After we had seen Racine light a while, we could see the shore. We could not see the land until we had seen the Racine light.

Cross-Examination.

Has sailed eight years. Have been before the mast, also as second mate and wheelsman on propellers and steamboats; was second mate of vessel three months, of a propeller two months, and steamboat a month and a half or two months; the rest of time have been seaman and wheelsman. Have had occasion to heave the lead pretty often in my experience.

The lead line on that vessel was marked in fathom marks; first mark was a leather mark spliced in, and so on up to five fathom, there it was a white cloth mark. Four fathom mark was strip of leather; did not differ any from the mark one fathom; up to 4 fathom we had a similar strip of leather; no way to distinguish them as far as I know. Five fathom mark was a white cloth. Heave the lead, stand facing the bows on starboard, and heave forward; throw it forward as the speed is; throw it as the occasion requires. Was twelve or fifteen feet above the water when I throwed the line; no light placed so as to reflect any light on the water where the lead was thrown.

I allowed that it took 2½ fathom of line over the rail to reach the water. I had a mark on the line from the rail; had a mark on the line the distance I supposed the water was from the rail, and then counted the marks as they went out of my hand; could do so when she went slow as she was going then; counted them as I hauled it in; it was first eight fathoms, then 2½, and then four. Could not say whether the vessel was on the same course during all these times; could not see the time-piece after I left the wheel. Shortly after the water deepened to four fathom, I heard Collins sing out to the captain that he saw the Racine light. It got to 3½ afterwards; it got to 3½ shortly after I got four fathoms. The last sounding I made prior to collision was a little over three fathom; believe I called 3½. I was sounding all the time until after the whistle blowed two or three times, except Mr. Collins heaved it while I went into the cabin to get a drink. When the whistle blowed I got about 3½ fathom of water.

Did not see the point, but it begun to be clear after we got around the point. Whistle was blown; might have been five minutes before collision, might have been less, not over five minutes. We had been blowing the whistle at intervals all the way from Milwaukie until we see Racine light, or just before we saw the light. I had not heard it for about half an hour before the collsion, except just before the collision. It was blowed once in about five minutes; did not blow it as it got cleared; in thick weather always blow it. It was thicker weather up there before we made Racine light; have seen it thicker; it was middling thick.

We left Milwaukie half past six, somewhere in the neighborhood

of that; went up to steer her out, to help out; took not long to back out and get her course set, not over five minutes, I should think; did not notice rate of speed, after we left Milwaukie; was going pretty fast, when I commenced throwing lead, and after that slower; did not notice what rate of speed was made; Racine about two or three, as much as three points, might have been more, off of our starboard bows; was heaving the lead on starboard side when I saw the larboard light.

Collins was on deck forward when he spoke, and said she was going to clear us; did not notice when he went aft, after making that observation.

Did not take particular notice of the larboard light as I was heaving the lead; could not but attend to but one thing at once.

When I went aft, vessels were not over four or five times her length off; vessel's mainsail was on larboard side of her; when I went aft, she was running right before the wind; that was her condition the last sight I had of her before I went aft; thought she was going to hit us forward, if she hit us at all.

It was all free on larboard side of the vessel. Could not see the mainsail when I went aft. She seemed to be dead before the wind, as near as I could judge. Did not see her mainsail jibed; the first time I saw it again, it was over on the other side. When I saw the vessels together, saw the main boom against our vessel. The next time I saw her, on the larboard bow, a little abaft on the bow.

Main boom of vessel struck larboard bow about fifteen feet, more or less, aft of the stem of the propeller.

Kept together until the vessel got around our bows. The vessel kept moving all the time, until she got around. I suppose our stem touched her hull most of the time. Vessels separated in a few minutes after they struck; could not say how long; short time; and all this time they were moving. Brig went around our starboard bow. Don't know what direction she was heading; she was apparently heading out into the lake, a northeasterly course, I should think. Could not say which way her sails were; I was busy cutting away our jib. Yards of vessel were square when she struck. I noticed her yards were square as she was coming for us, as I thought. I did not stay aft long before I came forward again. I went about midships when I went aft. I could see the vessel from where I stood, about midships; when I turned around, could not see her hull, but could see her sails and yards.

When I stood on starboard side heaving the line, I could only see the light of the vessel; could not see any part of the vessel itself. After I heard the mate tell the captain to stop and back her, I came across the deck to larboard side; up to that time I had not seen the vessel at all. I stood on larboard side, and looked at her a few seconds. I continued on larboard side when I went aft to midships. Know nothing about the course our vessel was kept on. I noticed

Racine light while I was cutting the jib; noticed it before we got under headway. Were off on our larboard side, larboard beam. Did not notice how far it was off, but it was well off our larboard bow, or might have been more amidships from us.

Saw red light on the pier just before the collision; bearing could not tell, but that was off her starboard bow; could not say how much.

Racine light is *is* a revolving light; could not say how often it revolves. Have seen it many times. Some say it takes about three minutes to revolve, but don't know myself. Saw the land just before we went ahead, after the collision. Should not think it was over half a mile off; don't know as 'twas that. Could not have been over a mile, or a mile and a half at most, north of the piers, before we got under headway after the collision.

After the vessel got clear of us, after the collision, the vessel seemed to be standing out in the lake, running about parallel with the point, and about half a mile from the land of the point. The shore line of the point bears in a northeasterly direction, by the compass, and southwesterly.

HORACE BARBER.

Truman W. Steel, sworn on behalf of the respondents, deposes:

Am thirty-five years old the 12th of this month; was captain of the Oriental; am a sailor; have been in that occupation about 16 years; have sailed in most all capacities except cook; never cooked any; have sailed as sailor before the mast; as mate, second mate, wheelsman, and master; have been master of propellers and steamboats about six years; have sailed as such master on Lake Erie, and most of the time in Chicago trade, between Buffalo and Chicago; am familiar with west shore of Lake Michigan. Was master of Oriental last season. On 19th of Oct. last, we left Milwaukie at half-past six. When we got straightened around and out, we lay there some two hours waiting for fog to clear up, so we could see to find our way, as we had to stop at Racine; we were bound to Racine and Chicago. I steered out southeast until I got abreast of south point of Milwaukie, and about the time we got abreast of that point it shut in foggy, and we could not see anything. We then headed her south by east, by the compass in the binnacle; then I came down and went into the cabin to see how she was heading by the bell-tail or cabin-compass, and found her heading by that south southeast; that was the only compass we could depend on, and always shaped our course by that; had three other compasses, two in pilot-house and one in binnacle. We run along on that course at usual rate, until half-past eight. I was in and out of the cabin occasionally to see the compass. I then went on the pilot-house, and stood there a few minutes, and told Collins to have a man heave the lead. He hove

it along a while and did not find any bottom, and I then checked her down, supposing I had run her time out, and that we must be up about the point. It is about twenty-one miles from Dousman's Pier, Milwaukie, to the point above Racine. Our usual time in running from Milwaukie to Racine, in clear weather, is about two hours and 35 or 40 minutes, and from that to 2 and ¾. We run along a spell under check without getting bottom, and finally we got soundings; as soon as we got soundings I rung to have her go very slow. The first soundings, I think, were eight fathom; every time we got bottom he would sing out; run along that way; kept on same course gradually, until soundings were, as given to me, some six, five, and at four. Then I told Collins to go aloft and see if he could see anything. I told him we must be near the point, somewhere. I headed her in half a point more towards the land. Well, we run along a few minutes, and man at lead sung out three fathom; won't be sure, but I think the next cast he had 2½. About that time Mr. Collins sung out that he could hear the surf on the beach. I listened and I heard it, too, distinctly. I run along that way a few minutes, and began to deepen the water, and next cast I got three fathom of water; run along that way a spell and got four fathom. I then commenced hauling her in a little, supposing we were a little past the point. Shortly after that Collins sung out from aloft that he could see the light, and I threw her in more yet, about three or four points. I hauled her right around gradually, not all at once, but let her come around gradually; run along that way a few minutes, and Collins came down on deck; he went down on to promenade deck, deck below where I was; fog commenced clearing up then; had cleared up considerable, so we could begin to see off a little distance.

Soon after he came down from aloft, I could see Racine light from the top of the pilot-house. I then headed her then right for the light. She was within a point or two points of it when I first saw it. We were heading southwest by south by the binnacle compass, when I was heading for the light. We ran along that way a few minutes, when Collins, the mate, said he saw a light a little on our larboard bow, ahead. I watched a minute when I saw it. I looked a few minutes and then saw it distinctly. The light of the vessel was bearing, at that time, about south by east. As it came along down it appeared to open on us a very little, and we could see it plainer too.

It kept opening as it neared us, and got some four points or five points on our larboard bow. When it got near enough, when she got near enough so I could see her sails, should think she was four or five points to windward of us, partly ahead, on our larboard bow. I saw her sails by light shining on sails. She was heading then about for our after gangway.

Should think at that time not over ten times her length from us. I thought she was getting nearer than was necessary, but did not

apprehend any collision, but I blowed the whistle so he would see us. As soon as the whistle blowed, she kept away right for us, and rounded to, and jibed his mainsail over when she was twice or three times her length off. Soon as I see him keep away for us, I immediately rung the bell to stop and back. As soon as she stopped and commenced backing, it threw her right around; slewed her head around towards the shore and her stern into the lake. The vessel came right down against us; her main boom hit right abaft of our forward gangway, about the same time they came together. The end of her main boom struck first, if anything. The vessel's yards took our flag-pole off; the up and down pole which we steer by. As soon as they struck I rung to stop backing. The vessel did not stop her headway entirely, but continued to go slowly right around our bows, and went off down the lake, heading partly out into the lake. After she passed us, Collins sung out we were all split open forward. I told him to cut her jib off the stay, and get it over the bows as soon as he could. I hollowed to the second mate to take a light and go down into the fore pique and see if the water was coming in; they came back shortly, and it was not coming in very fast. I then told the man at the wheel to put her helm hard starboard, and rung to have them go ahead. I went ahead, and got her heading for the light, or a little outside the Racine light, and fog had cleared up then so we could see all the lights; could see the red lights on Dutton's Pier, and light at mouth of harbor, and the revolving lights, all of them. We went ahead on her again, and got along aside of the pier, and taking out freight after getting the gangways out. As soon as we got along by the piers, I got her gangways right, and took out my watch to see what time it was, and then went down to see in the fore pique myself with a light. I examined the damage from inside, and found quite a nice little stream of water running in; could also see right out of doors on her starboard side, where her head ends had started off. Her stem was wounding down from between her 7 and ½ and 9 foot mark; from that down to her keel, and a scarf between her 7½ and 9 foot mark. It ripped her stem all out clear down to this scarf, and turned it around to the starboard; started her plank all off; probably a foot or more; four or five plank; think it was five plank on her starboard side. We lay there pretty much all night discharging freight; had nearly or about 100 tons of freight to land there. We left there about 4 o'clock in the morning; lightened her up forward, so she did not leak much except when we went ahead. When we went ahead under full headway, she leaked about as much as our pony engine could pump out. After I first saw this vessel's light plain, and supposed we were going clear of her, I rung to have propeller go ahead again; that's as much to say to engineer all right, all clear. We had been running under check so long that the steam had got down; I should judge so; we could not go ahead as strong as if we had had a full head of steam on. We

went some little faster than we had been going before, but not very fast, probably not more than four miles an hour, perhaps not much over three. About the time the vessel was leaving us, I asked the vessel if they were hurt much, and if they wanted any help, and Collins also asked them about the same time, perhaps a little after I did, and we got rather a curious answer for men in distress; they blated out something, and swore, and I did not suppose they were hurt much; did not understand their answer distinctly; another thing led me to suppose that they were not hurt much, was that they filled away their sails and went off into the lake, heading away apparently about north-northeast, or northeast of north, on our quarter.

Chart shown to witness, represents very near the position of the vessels when I first saw the light of the vessel.

Don't think the propeller is represented as slewed around quite square enough to the shore. Position of vessels as to each other about right, but think they are not heading quite enough directly to the shore; think the vessels were just about one-half way between the point and the pier at time of collision, and were inside of the reef; the vessel was inside of reef when we first saw her. The reason I hugged on to Racine Point so close was to avoid getting on to the reef in front of Racine. The reef, I calculate, is about two miles off of the piers, perhaps a little more. Have seen the breakers on the reef. Should think the centre of the reef, where the water breaks about abreast of the bridge or spile pier, just about due east from the town of Racine. The line of the shore south of the points bears about northeast and southwest, that is when you get down to the point.

The Racine light could not be seen from north of the point, except you was at least from four or five miles out in the lake. We never see the Racine light coming from Milwaukee until we get abreast of the point coming in.

A vessel coming to Racine from Milwaukie when abreast of North Racine Point would look to a vessel coming from Racine to the point inside the reef, as if the propeller was heading outside the reef up the lake, until she, the propeller, changed and headed for the light. Before turning, she would present to a vessel below the point her green and white light; could not see her red light until after she turned. Due south from the point would bring you on to the reef, about the centre of it, opposite Racine, about or a little over two miles east of the Racine piers.

I sounded around the point so as to be sure and not get on to the reef; propeller drew twelve feet of water. When we left Milwaukie, as we were abreast of the point, it was foggy; very damp and foggy until we got a little past the point, when it begun to break away. The wind begun to breeze up a little stiffer before we got to the point, at time I judged we were abreast of the Point from the sound of the surf. On the beach it was very thick, and we could not see anything at all, and the only way we could go was by the soundings

and the noise of the surf on the beach, and from the time we had been running. After we got around the point it began to clear up a little; was not so thick, but just as dark as it had been.

It is customary to send a man aloft in a fog if you are looking out for a light. Sometimes a man can see between from the gangway then aloft. Should not think the propeller was going over 2½ or three miles an hour just before I gave the signal to go ahead; that was the reason I rung to have her go ahead, as he had checked her down too much. At the time I rung to stop she was not going over four miles an hour; at the time I rung to go forward I took the light on our larboard to be a vessel's light going down the lake with a fair wind, and made my calculations that she had her mainsail on her larboard side, and that she was not going to keep away for the propeller, but that she would luff if anything. When I saw that she was nearing us, we could not have shifted our helm so as to have avoided a collision; we could if she had not kept away for us; we could have got past her when I blowed the whistle, the way she was headed, if she had not kept away for us.

We were running along then in pretty shoal water, as close as I wanted to run, and I see she was keeping away for us, and I wanted to back and get out of her way, if I could; but as soon as I saw she was keeping away for us, I knew it was all day for us, as she would hit us somewhere. If we had not backed, but had kept going ahead, she would have hit us about midships, or a little abaft of midships. We had some passengers, some horses, and merchandise; had about 700 tons of merchandise on board. Stopping and backing as we did, it changed the course of the propeller and swung her bows in shore, as much as five or six points, and could not have made that difference in some time by hard porting the helm.

She swings slow to starboard, carries her wheel about two turns to port, when she is loaded and going ahead; when you put her helm to port, she don't go off as fast as when you put it to starboard. It takes a good while to turn her any way. She is a long, heavy boat, but turns as quick as any boat of her size; won't turn as quick as a shorter boat. The propeller's compasses worked very nice, as well as propellers' compasses generally do. She had a full complement aboard of a crew, and well equipped.

The man at wheel, at time of collision, had been with me two entire seasons, and most of the time as wheelsman; was a good, trusty man; could be trusted in any place, to steer or otherwise, except to take charge; he was a good, steady, honest, sober man. In that speed and weather, one man could manage her wheel as well as a dozen; one could always do so unless in a gale.

When order was given to stop and back, I told the wheelsman to put his helm amidships. I used to know the Nebraska before the collision; that vessel light on a course north half east, with a six or seven knot breeze wind; south-southeast, putting her helm hard star-

board, would have time to jibe her mainsail, and come around with the wind abeam, very near in going a distance of two hundred yards.

At time of collision, the propeller could not have had much, if any, headway. If it had held on a little longer, the propeller would have had time to get out of the way; am sure her mainsail jibed when she was, I think, about twice her length from us. If she had not altered her course at all, the collision would have been avoided, and she would not have come within a quarter of a mile of us.

Thursday, 19th, we had three signal lights; the red and green lights stood back on the arches, very near one-third of the way aft from forward; aft in the highest place in the arches, directly opposite to each other, the red on larboard and green one on starboard side; the lights were properly secured, so that they could not be seen across the bows; they were legal and proper lights, such as is required by Act of Congress.

Propeller, I think, is 250 feet in length on deck, somewhere about that. Repairs to propeller amounted to something like 250 or 300 dollars. We were detained about two days, or two and one-half, or three days longer for repairs than we should otherwise have been, at Chicago; our expenses were something like $50, or $60 a day; had 32 men on board, all told.

Cross-Examination.

Did not make any protest of our vessel. I am not now in employ of the American Transportation Company; left them last fall; have hired out fore part of winter to sail another boat. The first history altogether of this collision after I came to Chicago, I gave to Mr. Miller, after the libel had been filed; believe he took down the substance of the statement I then gave him in writing; don't think I made any subsequent statement to him of the matter; might have told him some little points about the matter afterwards. I told Mr. Daliba about it; don't recollect what I told; he was not present when I made my statement to Mr. Miller.

In reading over the answer here in court-room, I noticed one thing not correct, which stated that there was three men at wheel at time of collision; if it so stated, it was wrong; had not heard it read before.

The chart introduced by defendants was superintended by the mate; the mate superintended this one. I got one up which did not suit the mate; he thought mine did not look ship-shape, and then he got this one up; mine was got up first, and in a hurry, and it represented the positions of the vessels about alike when the lights were first seen. My chart now introduced. That reef, I should say, was about a quarter of a mile broad; may be more. I should not go within half a mile of it. A line drawn due south from the north point, the beach, should think, would strike right on to the centre of

it; might fetch a little inside of the centre. A good seaman, going from Chicago to Green Bay with that wind, and not to stop at Racine, would go outside of the reef. I should, I know; if I had got to stop at Racine I should go inside. Takes about twenty minutes to run from pier at Racine to abreast of North Point, with usual speed, full head on, so as to take our course for Milwaukie. In clear weather think it about four miles. I went on pilot-house about half-past eight; I looked at my watch to see the time. I then went on pilot-house, and remained there until I got to Racine dock.

The man at wheel was changed about the time I went on pilot-house. Immediately after I came out I told the mate to call a man to heave the lead, and he called the wheelsman to do it, and sent another man to take the wheel. It was, I think, about 15 or 20 minutes, or shortly after that, that the mate went up aloft. I run along a few minutes, when I got on the pilot-house before I checked her; I checked her a few minutes after. I went on to the pilot-house, slacked her headway some, and as soon as I got soundings I checked her again; some few minutes elapsed, as much as five minutes, between the time of checking; second check was to go very slow; she remained running under the second check; might have been fifteen minutes or more, might have been less; under the second check she would not go over $2\frac{1}{2}$ or 3 miles an hour; not over 3, at outside.

It was probably four or five minutes after the bell was rung to go ahead, before I gave order to back; from time I gave first order to check, up to within five minutes of the time I gave order to back, we had been running under a single or double check; think the longest portion of that time we were going under the double check; rather think it was about half of the distance she run under each; think we were running about half the time, or very near half, under first check; was not very particular about the time between the checks, as I was paying attention to the soundings. A single check depends upon how much the engineer checks her; if she has a full head steam on would not check her quite so much.

Think first check diminished her speed about three miles an hour, probably; mate had been up aloft some little time, when he said he saw Racine light; could not say how many minutes; it was just before he came down that he sung out he saw the light. I had not seen the light, or anything, then. I did not see it before he came down. I looked to see if I could see it at time he sung out; could not see any lights at that time. Mate came down in three or four minutes after he sung out that he saw the light; he went on the promenade deck, forward to the eyes of her, into the forestay; did not take particular notice where he went, as was walking about the deck; might have been three, four, or five minutes after he came down before I saw the light; think he saw it first after he came down; we saw it about the same time; we had run along some five minutes

after this, and after we were heading for Racine light; before we saw the light on larboard bow, after I saw the Racine light, I headed her for the Racine light; brought her around to it gradually a point at a time.

At this time could not see the land at Racine; could not see it at that time anywhere. Saw it shortly after that, as it was then clearing up. Should think the last change was two or three points, perhaps three points, before she was headed directly for the light. It might have been five minutes after this that the mate saw the larboard light; might have been more, perhaps not quite so much. I saw the larboard light, but did not until the mate spoke; presume I saw it about the same time he did; could not have been many seconds between the time the mate spoke and the time I saw it. Saw the larboard light perhaps ten minutes before the collision; might have been a little more, can't say exactly; should think she bore 2½ points over the larboard bow; full 2½. At this time we were on south-southwest course by compass in cabin, and southwest by south by our binnacle.

Can tell in the night as well the variation in change of course of propeller as in a sail vessel; we have to tell the variation of course of a propeller by a close observation of the compass, unless we can see something. If heading right for a light which is stationary, we steer directly for it; keep our course for it; can see the compass from the pilot-house through a hole. Saw South Milwaukie south point when abreast of it; we were our usual distance from it; should think a mile from it; the high bluffs. The weather closed in very thick after that; had been thick all the way up; continued thick until we got a little past the point; fog then begun to scatter. We were about abreast almost, or a little past Racine Point, when fog began to clear up and scatter. Call it a dense fog from the time we passed South Milwaukie Point, to the time, I suppose, we were almost off Racine Point. Could see a light perhaps quarter of a mile, but could not see a vessel's sails twice her length; that was reason we blew her whistle once in from three to five minutes; did not blow it myself, but had it blowed.

Propeller was heavily loaded; her burden is 965 or 956 tons; had on something over 700 tons. Had not landed any freight at Milwaukie except horses and passengers. We did not have much iron that trip; principally dry goods and groceries; did not have as much iron as usual that trip. It is customary to run full head in such a fog, by making the necessary noise, and keeping proper watch and precaution. Sometimes run under check. We depend on having whistle or exhaust on propeller.

Wind was blowing think a 7 knot breeze when we got, as I suppose, about abreast the point; before that might have been a 4 knot breeze; might not have been quite as much as that. There is some shoal water north of North Racine Point; have never been on it.

There is no reef in a propeller's course going from Milwaukie to Racine Point; think there is a reef north of North R. Point; don't run out within half a mile as far as the point. Point runs out about half a mile from main shore; have never been in to examine whether there is a reef in there or not; have heard there was, but don't know anything about it except by hearsay. Don't know enough about the reef north of the point to be able to give any information as to its locality; if there is any reef there, it must be to the north of the point. I hauled her around a point while Collins was aft, and from that time begun to haul her around gradually, a point at a time. When Fellman took the wheel, I did not at that time give him any orders; did not think any orders were necessary; did not, until I gave him orders to haul her in half a point; and after I saw the light, told him to haul her for the light. Think larboard light was a mile and a half off, more or less, when I first saw it. When I saw the light on larboard bow first, it bore south by east from us. Our vessel was heading southwest by south, by our binnacle compass. At that time I watched the light of the vessel close, and she opened on us a little until she got down so I could see her light shine on her head sails. She was heading then just about for our after gangway; that was before I discovered any change in the vessel's course. The vessel bore then, I should think, 4 points on our larboard bow. I could not state the course the vessel was on accurately by the compass without making calculation; could not ascertain a vessel's course exactly without being aboard of her; had not ascertained the exact course of the vessel within a point or half a point, but judged the vessel was steering, from the time I saw her light, by the way it opened on us a little until I saw her sails, to be north-northeast.

When I first saw her sails, the main boom of vessel was on her larboard side; her yards were square. When I first saw the vessel's sails, she was, I think, as much as five or six times her length off, a little ahead, and about four points on our larboard bow; might have been a little more than five or six times her length off at that time, far enough to have gone clear of us, if she had kept her course. It was the vessel's lights I saw shine on her sails. The Racine light was then right dead ahead. Saw at that time the light on the pier; saw the light right dead ahead, south-southwest course, and steering directly for it. I blew the whistle just as soon as I saw the sails of the vessel. It is not customary for vessels to go nearer the land in coming into Racine, than when in rounding the point; in a direct course they would *they would* not be quite so near as when at the point. Dutton's piers is from 300 to 500 feet, as much as 300 feet anyway from the shore; should think it all of 500 feet from where the pier commenced to the beach. About the time I whistled, I gave the signal to stop and back; the two were near together, not many seconds. As soon as I blew the whistle, he kept right away for us, and continued to come right around. The vessel was five or

six times her length off when I blew the whistle, bearing about southeast by east from us, I should judge, and at that time just about half way, from a third to half the way from the point to Racine dock. At time I blew whistle, she was five or six times her length off, and we were going three or four miles an hour, when I stopped her immediately, which slewed her stern around to the lake.

I rung to stop, and then rung to back, just as the vessel begun to keep away for us. It was immediately after I blowed the whistle, that the vessel begun to keep away for us. The reason I blew the whistle was, that I did not know as the vessel saw us. Five or six times her length off, when she begun keep away for our after gangway.

At time of collision, don't think we had much, if any, headway on her. If she had had much headway on her, she would have run right through the vessel, loaded as we were.

At the time her mainsail jibed, think she was once or twice her length off; might not have been more than once her length off, when her mainsail came over. She was heading then about square to our stem; she was on a swing all the time, so that when they came together, she ranged past our stem a little. At time main boom jibed, she was heading for bluff of our bows, and kept swinging all the time, until she ranged past our bows. The vessel was heading a little to northward of west, as to the shore, and the propeller was heading as to the land, a little to the southward of west, both heading westerly, coming together in a kind of triangle. Main boom struck somewhere along abaft our forward gangway 60 or 70 feet from our stern. Think the mate was mistaken if he said the boom struck 15 feet from our stem; main boom struck us before, or about the same time our stem struck her. I agree with the mate that the boom struck first, though they were pretty near together. Our flag-pole was carried away about time the boom struck us; flag-pole carried away, I think, by the yard of the vessel.

I noticed Racine light as soon as she got clear of us, before we went ahead on our course forward of abeam, well off our larboard bow. At that time I saw red light on Dutton's pier; think the land was a half a mile off at that time; might have been a little more.

I told Barber to heave the lead again, just as I started to go ahead, and he cried $3\frac{1}{2}$; and about the time, or before, when we got turned on our course, heard it three fathom. Don't recollect whether I stated on direct examination that vessel was 10 or 15 times off when I blew the whistle, and when she was heading for our after gangway. If I stated so, think it was setting it above the mark, perhaps double, the mark might be. Cannot tell particularly, think she was heading as much as ten times her length off. When I first saw her sails, might have been less, might have been more. Should think she was from five to ten times her length off; far enough, at any rate, to have went clear of us, am sure of that. There

is a difficulty in the night in determining the length a vessel may be off, when her sails can be seen. Think it could not have been over ten times her length off; pretty sure it was not. Perhaps I might have over estimated the difference when I said from 10 to 15 times her length off.

Main boom struck probably five or six feet abaft forward gangway of our vessel, somewhere about that.

The vessel kept going all the time, and got clear and went past immediately on her course.

The mate was gone below to see if we made water, but a few minutes; don't think he was gone five minutes, but it might have been five minutes, and soon after he brought back his report, I gave the order to go ahead.

I noticed yards of brig as she came up; they were about square. I noticed the yards were square and sails on them, and filled, and that they took away our flag-pole. Our flag-pole stood up and down and was stationary, with a large ball on it; it stood just abaft the stem *stem*, projected out probably fourteen inches. After the collision, did not notice particularly how many points we changed her to get her on her course for the light. I calculated that the vessel had her starboard tacks aboard when I first saw her light; that was the conclusion I came to, and supposed the vessel would keep down the lake to windward of us. With the wind in that quarter and vessel's course north-northeast, her yards would be very near square; might be braced in a point on her larboard, but think they would be pretty near square; they would be so near square that a man would not notice it in a dark night, unless he was in the vessel. Don't think it would have been safe to have ported much; if we had, we should have been likely to have run on the beach.

In a night when it was light enough to see a light three or three and a half miles off, we frequently run near enough, so that we cannot port our helm without danger. We don't usually run so close, so but that we might port some; in this case porting would not have done any good.

I wanted to make sure and get inside of the reef. I supposed I was in the neighborhood of the point. Reef runs down shoal water within one and a half or two miles of the point. Have never seen the water break within two miles of the point; think there is water so shoal within two miles of the point on north end of the reef that I should not want to run into it. Suppose three miles to eastward of point when I begun to change course first half a point, then a point gradually. A vessel coming down the lake north half east, if the vessel was dead ahead, she would see all of the propeller's lights. Changing my vessel gradually towards west would bring the red and white light to view and hide our green light to her; would tend to bring out our red light and hide our green light, providing she was ahead and straight down the lake.

Direct resumed.

No order was given on our vessel to hard starboard or hard port helm from time whistle blew until the collision; all the order I gave was to put the wheel amidships.

From the time we started to go ahead after the collision to the time we got to Racine, was about twenty-five minutes.

I looked at my watch as we started; it was a quarter before ten; and when we got along by the dock, and had got our lines out and our gangway right, I looked at my watch again; it was ten minutes after ten.

Cross resumed.

Did not hear any order from the propeller to the vessel to port or starboard helm. I hollowed and asked them where they were coming to.

Cross-Examination resumed.

The first plat or chart was made about a week before this trial commenced; the other was also made before the trial commenced, about a fortnight ago, or about that time. The first one was altered, and it did not exactly suit me then.

If I had been a draughtsman I could have drawn it, but it is difficult to direct another man.

The courses of the vessels have been changed and scratched off once since the plat I directed was made. Some of the lines might have been scratched off of twice.

It requires some skill to make the dotted line to indicate the course exactly of a vessel on a map. I gave the draughtsman the directions for course of the vessel on the map. The man who made the chart made the lines; I did not make any of the lines or marks. The one I directed did not suit the mate, so he got up another one, which has also been altered, on the shore above Racine.

Don't know whether the course indicated on shore above the point has been altered on my plat or not since it was first made.

The red line on my plat has been entirely erased, indicating the course of the vessel, and a lead line substituted by me in its place.

I did that two or three days ago; after the libellant's testimony was given.

I did not give directions to man to put reef of rocks on map to north of point. On a night like that, should think could hear the waves on the beach a quarter of a mile, perhaps a little more; think I could hear it a half a mile.

I don't pretend to say either of them charts are exactly right. When the charts were first made, lines were put down without marking the courses of the lines, and courses were marked afterwards.

TRUMAN W. STEELE.

Hiram McHenry, sworn on behalf of the respondents.

I am a sailor; commenced in spring of 1834; am master of propeller now; have been master of propeller or steamboat since fall of 1850. Have sailed principally between Buffalo and Chicago since 1836; am familiar with west shore of Lake Michigan.

Recollect the evening of the 19th of Oct., 1856. It was a quarter after 12 in morning of 20th Oct., I was in Prairie State propeller, and broke down three miles below Sheboygan, bound up the Lake for Milwaukie. It was pretty smoky, a thick night where I was. It was more smoke than fog; had a very thick time that passage, thicker than I ever saw it before, from Lake Erie to the place where I broke down;

In coming from Milwaukie in the night in such a fog, intending to make Racine, I would, in a propeller if at Bridge Pier, should back out far enough, so I could go ahead with my vessel and clear the piers, and put my vessel on a course that would clear Milwaukie South Point. In thick weather I would notice the time, and shape my course for North Racine Point, run up my course from pier to South M. Point, and then shape it for Racine Point. When I had run my time up to bring up off Racine Point, or just before, I would heave the lead; heave to see what water I was in, and alter my course, depending upon my soundings; and if I did not get soundings, as I ought, I would haul her up near to the land until I did find land. After I found land, so I could follow it up by soundings, I should do so until I got into Racine, provided it was thick weather so we could not see.

I should send some one up aloft to see if they could see the Racine light. If I did not believe their sight, I might stop her and go up myself. We can sometimes see better up there than on deck.

I often take soundings north of the point, and feel my way around by soundings, but I usually run up to my full time, bringing me about abreast of the point. As it is easier and quicker, we generally calculate to get soundings on the point four, five, or six fathom, and then haul to the westward; if I don't shoal water in running a short distance, generally calculate the first soundings you get will bring you near the point. We can generally tell by the compass within a short distance of where we are going to bring. You commence soundings below the point, and find bottom, and feel the way around it with caution, of course, but the only difference between *between* it and the other course is *is* to save time. I have never been mistaken myself when I reach the point; I have passed it a great many times; it is a hard matter for a man to be mistaken if he knows where the compass will carry his vessel, and he finds soundings there.

Under such circumstances, from Milwaukie South Point to Racine North Point, the course would be south-southeast. If it was blow-

ing a gale of wind from the westward, I should haul her up half a point.

We sound around the point in that way so as not to get south far enough to get on to the reef abreast of Racine. The course south-southeast from Milwaukie to Racine Point, would generally be inside of vessels going on usual course from Chicago to Green Bay, and in a 6 or 7 knot breeze, wind south-southeast, free wind, they would usually keep outside of us altogether.

I have frequently passed Racine Point within half a mile of the shore, perhaps nearer; it is shorter to the south of the point than abreast or to the northward of the point; abreast of the point, a half mile off, think would not get less than four fathom of water. I never calculated to get in less than from three to four fathom in rounding the point in thick weather, and if I judged I was getting in shoaler than that, north of the point, I would haul out some; have passed near enough to hear the surf on the beach frequently; should think it dangerous off the south shore from the point, on course to Racine, in four fathom water to port helm.

A vessel from Chicago to Green Bay, course north half east from Chicago, if keeping on that course, off Racine, she would be about twelve miles.

Sailing to Kenosha north by east, and then changing her course north half east from Kenosha, would bring her still further off from Racine. Suppose four miles abreast of Kenosha, and then keeping on a course north half east, would bring her, should think, would bring about a mile east of the North Racine Point, perhaps not quite so much out as that. It would not, in my opinion, bring her a great way from the end of the point.

It is not good seamanship to steer a vessel from the light of a propeller, a mile and a half ahead of her; it is not good seamanship to steady a vessel by that light; in doing so, if the light should move to port, it would bring the vessel to port.

If a vessel on her course north half east, a vessel on her course north-northeast, six-knot breeze, south-southeast, she would then be going off with a free wind; the same vessels would jibe her mainsail in going 2½, and others in going more points, after she gets dead before the wind. Have seen the Nebraska frequently, and her spars do not rake as much as some other vessels; she rakes not more than from four to six feet, I think, but may more; she might jibe in going off 2½ points, perhaps three points; after the wind got dead aft, she would move off 2½ or 3 points before her mainsail jibed, or before she came to. The Nebraska being on her course north half east, light six-knot breeze, south-southeast, under the same circumstances as above stated, putting her helm hard starboard, I should think, in going 200 yards she could jibe her mainsail; that depends, however, on how quick a vessel steers; vessels

in general, in such a breeze, mind their helm very quick. If her course was more to the westward she would fall off easier.

Adjourned to to-morrow.

Friday morning, Feb. 20.

Have had a few instances where an ordinary seaman, not a good wheelsman on a sailing vessel, would sometimes steer by a moving light; by that of a steamboat light, when it was a hard matter to get a star or anything else to steer by. I have had two or three such instances. He would see a light ahead, and steer by it, and first I would know, the compass would indicate that she had got off her course several points. Once, when I was in the James Wood, the wheelsman steered for a propeller's light, and got off our course. If a man don't understand steering by the compass, if he can get an object to steer by, he can keep his vessel steadier than by looking at the compass.

Cross-Examination.

A man, master of a vessel, on the watch, constantly looking out, would know, if he looked at the compass, when his vessel varied from his course. There is no difficulty in a master watching in such circumstances, and determining the course of his vessel, and if he looked at his compass he would know whether she was on her course or not, and would detect any variation.

In going along with wind on starboard quarter, vessels going off with the wind free, after giving the man the course, he would see that he kept it every 15 or 20 minutes, if he wanted to keep a good run of his vessel.

If he stood by the wheelsman on deck, and carefully watched, he would see it oftener than 15 or 20 minutes at least. I should if I wanted to be very particular, and if he saw steamboat lights ahead, and knew that it was his business to keep directly on his course, a good master would be likely to look and see that she was kept so.

Coming up the lake the wind was south-southeast, blowing fresh, blowing about five or six knot; perhaps six knot; it had been blowing a good deal harder; not much sea where I was; not near as much as there had been. It blowed a good deal harder before 12 o'clock that night, than it did after; wind from same quarter. South Point is seven miles from Milwaukie to abreast the point; generally give South Point about one mile berth in foggy weather; sometimes less, sometimes a little over; a man well acquainted there can go within half a mile or less.

From a mile to eastward of South Point of Milwaukie, taking a course south-southeast, will bring you not exceeding a mile abreast of North Racine Point.

A mile east of North Racine Point, sounding from 7 to 10 fathom, and half a mile about 4 to 5 fathom. Two miles out, would not find

bottom in 10 fathom, I think; but never sounded out there. Don't know the soundings out as well as in the immediate neighborhood.

There is no ledge of rocks north of North Point, except on the beach, just north of the east end of the point; no rocks that extend out there any distance, not over 200 yards north of the east end of the point. Know rate of speed by frequent running; and knowing what speed she makes, by the steam she carries, have to make allowances for sea, wind, and cargo, &c. Can tell from the motion and jarring of the boat when forward, whether she is going 10 miles or less. Blowing whistle frequently would make no perceptible difference in speed of propeller; in looking at steam gauge when blowing, would not perceive any difference in the steam.

Propeller goes full as fast, if not faster, when loaded, than when light; she does certainly when it blows.

If loaded down, so as to have her wheel under water, and loaded to her full capacity within 100 tons, she would go as fast then, as at any time. If I found my vessel in 2½ fathom water going to Racine, would depend upon circumstances whether I continued on my course.

If I felt satisfied I was on the point, and I knew that I would not get into any shoaler water by the next cast of the lead, I would continue on my course. If I did shoal it, I would starboard my wheel, if not stop back. If in a fog, and could not see the shore, and in 2½ fathom, by sounding vessel drawing 12 feet of water, I should, if I did not know where I was, alter my course most assuredly. When seeing nothing at all, when I struck, by sounding three and 3½ fathom, I should not alter my course, unless I shoaled from that.

Shoal to southward of point extends out a quarter of mile of the land; that is closer than we usually go. Within half a mile of the land, there you get five fathom water. A half a mile from land, or half way between Racine piers and the point, good water, good as Racine harbor; it is five or six fathom from that up to the beach. Shoals gradually, 2½ fathom within 200 feet of the beach, about half way between point and piers; very little difference in the soundings along and around from the pier to the point. If anything, a little difference more shoaler in neighborhood of brick dock. With a spar raking ten feet, with wind dead aft, she would jibe her sail in going off about 2 and 2½ points. I am running a propeller now during time of navigation. Have been ever since 1850 in steamboats and propellers; have been on steam vessels exclusively since that time, and one season, or part of a season, before 1850.

The ordinary or usual course of a vessel from Chicago to Green Bay, would be east of the reef, opposite Racine, and also east of Racine North Point.

I should conclude it very bad seamanship, in going from Chicago to Green Bay, not intending to stop at Racine, to get west of the reef abreast of Racine, unless he wanted to run her ashore.

HIRAM McHENRY.

On part of libellants.

A vessel 3½ or 4 miles east of Racine, a vessel going north half east, would go in neighborhood of a mile east of end of North Racine Point, not exceeding that.

The reef is three miles due east from the Racine light.

HIRAM McHENRY.

C. N. Cramer, being sworn on behalf of the respondents, deposes as follows;

Am a sailor; have been about twenty years. Was master of a sailing vessel last year; am acquainted with west shore of Lake Michigan. Recollect 19th of October last; sailed from Chicago that day about 10 o'clock in the forenoon. My vessel was called "Leader," bound for Oswego, with wheat. Did not go as fast as if I had been light, not near.

It was very thick after leaving Chicago; did not see any land plain enough to make out what it was until about four miles above Kenosha. Made it then by steering in; got into very shoal water. Kept in sight of the land from there until we got to Racine. I intended to stop at Racine from above Kenosha; when I saw land, continued from quarter to half a mile from the shore till I got to Racine. When within from 12 to 15 times the vessel's length from Dutton's pier, I run out of the wind entirely. My vessel was in an unmanageable condition without the wind; what little sea there was, was setting her towards the shore, consequently gave up the idea of stopping at Racine. We were in that position some time; don't know how long, before we could get her out where she would catch the breeze again. When we got the breeze, we steered as we usually do, far enough to clear the point; should think about half a mile. Passed the point, should think about 8 o'clock.

When about four miles apast the point, and about 3½ or 4 miles from the shore, a vessel passed us bound apparently for Milwaukie; we altered our course a little to keep clear of the vessel. After the vessel had passed us, and was disappearing in that direction, I saw one, another light, not the vessel's light; on examining closer, it proved to be a steam-craft; could not determine positively whether it was a propeller or a steamboat. Should judge the steamboat was about a mile and a half off from us, towards the shore, rather towards Milwaukie. A line from us direct to the shore would not have touched the propeller; it was more to the north of us, towards Milwaukie. Should judge this to have been about half-past eight; should judge I was then from 3½ to 4 miles from the shore. It had spells of clearing up, so that at times you could see the land very distinctly; at other times you could not see it at all, from half-past 7 to half-past 8; it appeared to me to be thicker as I passed the point to the north.

The weather was not steady any 5 minutes alike. Could not say how far I could see a vessel's light; sometimes could see it further than at others.

Have never sailed on Nebraska; am acquainted to some extent with the Nebraska; have sailed out of the same place with her, several seasons; have been intimately acquainted with her three seasons. If Nebraska was on her course north half east, six or seven knot breeze south-southeast, hard starboarding her helm would change her course in going 200 yards, in my judgment, she being light. Any vessel that I have ever been in would come around nearly head to wind in that distance, in that speed and wind, on such a course and in such a breeze. I should judge she would change 2 or 2½ points after the wind was aft before she would jibe her mainsail. If the mainsail was half way off, it would jibe sooner than if it was clear off.

Cross-Examination.

A great many circumstances wherein the best of seamen would jibe his mainsail all standing, as we call it, or there are circumstances where it would be done; the dangers of doing it would be of carrying away the main sheet boom and top and lift, and the gaft also, but think there would not be danger of it in that wind.

Suppose wind two points on a vessel's quarter, and in once or once and a half her length, her helm put hard starboard, should think her mainsail would jibe in that time; pretty tight fit; would not more than do it.

Should judge she was worth $6500 the second year I was acquainted with her; that was, I think, two years before she sunk; it was in 1854.

When I was 3½ or 4 miles from the shore above the point, and saw the vessel pass, don't know but the point was in sight; I saw it as I passed it.

The vessel that passed us, I saw her light first, should judge from one-quarter to half a mile. Should think the vessel when I saw her hull, one-quarter of a mile, or about 20 or 30 times her length. Should think she was from 1200 to 1500 feet from us, or thereabouts; did not make anything but lights from the steam-craft; a mass of light together, enough to distinguish her from a sail vessel. It was not more than 10 or 15 minutes after the vessel passed me, before I saw the mass lights. I don't remember positively my course; think it was north by east. I had changed my course frequently; was bound to Oswego, not to stop at Milwaukie.

The mass lights when I saw them bore a little to the north of a direct line from us to the shore; think not a half a mile north of a direct line. My vessel was going sometimes faster and sometimes not so fast; the breeze changed. Should judge my speed was about

an average of 5 miles an hour from the point up along, perhaps more.

Nothing from which I fix the time when I passed the point, accurately. Could distinguish the mass lights sufficiently to know that they were a steamer's lights.

Direct resumed.

The reef is a large three miles abreast of Racine; should think the Nebraska, in such a night, entirely light, could pass over it.

It is of frequent occurrence with me, in my experience for sailing vessels, steered by common sailors, to get out of their course, unless the seamen are watched, by steering for movable lights, unless they are watched. It is of very frequent occurrence that they are careless on that point, because it is a great deal easier to steer by an object, supposed to be stationary, than to steer by the compass.

Cross resumed.

When sailors are steering by the compass, they need watching, as they do not always steer correctly by the course.

All the seamen take turns at the wheel; more specially whose duty it is to do so. Officers of vessels do not rely entirely upon the helmsman to keep a vessel on her course; it is the duty of the master to watch her course.

I look to the mate, or officer on deck, when I am not there, to keep a vessel on her course. When I am on deck I depend upon my attention to it to keep a vessel on her course. If she is not kept on her course, if paying attention, I discover it at once.

No separate reef of rocks north of North Racine Point, but is connected to the land or shore.

Should judge about 4 or 5 times the length of a vessel from the land; it is rather the north side of the point. The reef runs about in a northeasterly direction from the point; north side of the point, I should judge.

Have been close to it; should think it safe and navigable to within 300 feet of it.

Should think there was 10 feet of water to within about 300 feet of it.

C. N. CRAMER.

Here James Stewart, sworn and examined by libellants

A. H. Rossman, sworn on behalf of respondents, deposes;

I am a sailor; have been 23 years in all capacities; have been master of steam vessels for eight years on the lakes; am acquainted with west shore of Lake Michigan.

In coming out of Milwaukie, bound up lake, to stop at Racine, sailing in the night time in thick weather. Coming out of Milwaukie to steer east-southeast first from the piers, until we get abreast of South Milwaukie Point, and then south-southeast for North Point of Racine, and from there to the Racine pier southwest by south. Generally go close in to the point, if it is weather so that we can see. If the weather is so thick we cannot see the point, make calculations to steer a little more to eastward. In thick weather we calculate to run our time up, and then haul up and go slow, and take soundings. I have never happened to be around the point then, in thick weather, coming up so as to be obliged to sound; have done so when I was bound down. Have found Racine by soundings when bound down, by feeling along shore.

Cross-examined.

Give South Point in Milwaukie, in clear weather, about a half mile berth, or less than that, and in foggy weather a mile, or a mile and a half.

After rounding Racine North Point, we take our course for Racine in pretty close, southwest by south, further out, southwest course. If inside of a range of the point and the pier, might perhaps go south-southwest; don't know what course she would be on to steer her in that direction.

A course north-northeast from Racine would carry to shore before we reached the point, and therefore, a course south-southwest must carry a vessel to eastward of the pier.

A course southwest by south, from within twenty rods of the point, would take us within half a mile from the main land. Suppose you run half a mile eastward of the point, a course direct for the light would carry you a mile to the eastward of the land between the point and Racine.

When I run by time in foggy weather, calculate to be very accurate about the time. Under such circumstances, if we can see South Milwaukie Point, we time her accurately as we pass. We try to carry the same steam uniformly in foggy weather. We try to get a careful observation of the speed of the vessel, taking into account her load, the weather, &c.

Those observations are necessary to be very accurately made when sailing by time, as accurate as we can get at it. Course from Milwaukie to Racine carries us to the west of vessels bound down the lake from Chicago.

There is a reef about 3 miles east of Racine, which all vessels are supposed to go outside of when going down the lake from Chicago.

A straight course from Chicago to Green Bay, due north from here to Death's Door Passage, and would take you about seven miles east of Racine Point.

While hauling around the point, we may steer a short time south-southwest.

Cross-Examination resumed.

A vessel 3½ or 4 miles east of Racine light, course north half east, should think she would go 2½ or three miles from North Racine Point.

A. W. ROSSMAN.

Adjourned to to-morrow morning.

Saturday Morning, February 21, 1857.

Charles Harding, sworn on behalf of respondents.

Am a mariner; have been 20 odd years; as a general thing have been in sail vessels; in steam-tug last year; have sailed in steam vessels, and a tug on Lake Michigan.

In sailing out of Milwaukie for Racine in the night in thick weather, my course would be to run out to South Point of Milwaukie, and then shape my course south-southeast until I judged myself off North Racine Point, and then feel my way around by soundings. A man that knows the way can generally find the way in by soundings in that way.

If in a sailing vessel, on her course north-northeast, with wind south-southeast, with 6 or 7 knot breeze, and should see a steamer's red and white light about a mile off, a little starboard of ahead, I should calculate she was heading more in shore or for me, than otherwise. If I changed my course at all in such circumstances, with my boom on larboard side, think I should put my helm to port if I changed at all; that would be the quickest way to change her.

Cross-Examination.

Don't think a sail vessel ought to change her course under such or any circumstances, unless she finds there is a prospect of a collision, then she should do all she can to avoid it.

Vessel heading northeast, and propeller coming down a length and a half off, pointing, heading for head-gear of vessel, the only thing the vessel could do would be to starboard her helm.

If the vessel had put her helm to port, they would have come head on to each other.

Vessel's course from Chicago to Green Bay, from off Racine, don't think I ever steered a straight course going down to Green Bay, but have going up, until I think am pretty well to Chicago, then haul in.

I never knew of steering a course north half east inside of reef, in heading for the land north of the pier at Racine. Should not suppose any man competent to sail a vessel would ever be in there, within half a mile of the shore. His course would be outside of the reef, when not intending to stop at Racine in the night, and wind as

it was. Must have gone within half a mile of the piers at Racine, to have brought up a half a mile from the shore, between the pier and North Point *and North Point*, and a mile and a half north of the pier, on a straight course down the lake, north half east. A course north half east would take her as near the light on the piers as any course which would bring her to the point indicated, a mile and a half north of the pier, and a half a mile from the land.

Suppose a vessel 1½ miles north of Racine Pier, and half a mile from the shore, wind as stated, the starboard side cut open 5 or 6 feet abaft the fore-rigging, so as to be leaking very fast, so fast as to sink in 2½ hours afterwards, running, and her main boom disabled by having her top lift carried away, so that the boom rested on the taffrail; under these circumstances, don't think I should have tried to get out of the way, but should have tried to get into Racine, but if they were disabled so that I could not use them, I would have run down before the wind and got in shoal water.

In undertaking to go to Milwaukie in that wind after passing the point, I should have had my mainsail on starboard side, so as to have got to shore as quick as possible, if she was leaking so bad. Vessel making water as fast as that, should have boom on starboard side, so as to have easily got into shore. The boom would list her down on the side on which it was, on the Nebraska running light.

Reef abreast of Racine; should think it was a little over three miles out from Racine; have passed it inside and out a great many times. Have beat through many times, when I was surprised that the water was so good; and have seen the water break on it as if it was very shoal. Have never been on a propeller in a thick fog, from Milwaukie to Racine around the point.

Think in doing so, should make my calculations to make soundings before I got to the point. As the water increased in the vessel by leakage, think I should be very apt to take in fore and aft sail; she would roll and become waterlogged very easily. The more water she took in, and the more sail we took in, the slower she would go ahead. Suppose that vessel at time of collision was a mile or a mile and a half north of North Racine Point, with wind as it was; should try for the first port I could reach, with a fair wind, which would be Milwaukie. Should suppose there would be no difficulty in seeing Racine light in a clear night in a vessel two miles to northward of the point, provided she is three miles east of the point. There is a point from which you can see both Milwaukie and Racine light at once; which point would be, I think, from six to eight miles from the land, coming up from Milwaukie to Racine. Could not tell precisely where, but would have to be some distance out in the lake; but have seen both at the same time.

I have seen propeller Oriental; suppose she was heavily loaded in the course, as suggested. In porting her helm or starboarding it, she would change her helm pretty quick in starboarding her helm; but

don't know how soon she would turn in larboarding her helm, but would be slower: it would be owing to circumstances.

The propeller going four miles an hour, suppose the engine is reversed; don't know how many times her length she would go before she would stop her headway. Should think she would go twice her length, but don't know, cannot tell; don't know as it would be as far as that. A man cannot tell; he wants to be aboard a vessel to understand her headway, to know how soon she could be stopped. The tendency of a propeller is, in a heavy sea, with wind ahead, is to swing opposite to the way the wheel turns in a heavy gale of wind. In a thick fog, so thick you cannot see a vessel a length off, for a propeller like the Oriental, heavily laden, on the course from Milwaukie to Racine Point, should think they run as fast as at other times, until their time is up.

Have not been on them, but have noticed them running past me, about as fast as usual under such circumstances.

Have had command of sailing vessels a good many years. It is customary on sailing vessels for masters and officers to put seamen at the helm. The seamen all take their regular tricks at the helm.

The officer on watch on deck relies on himself, or it is his business to know what course his vessel is making.

If he understands his business, and pays attention, he will know very soon, I think very quick, if she is off her course.

A propeller, rounding Racine Point, shaping his course for Racine light, in atmosphere where those lights could be seen a mile and a half off, think it depends altogether upon circumstances, whether it would be good seamanship to go so near to the shore that you could not port your helm, under the circumstance of the propeller, wind as described, when you could see Racine light 1½ or two miles off. I think a man might be feeling up around the point, there, in pretty shoal water, and see Racine light, being acquainted with the bottom, then, being acquainted with the bay, and steer up for Racine light, and yet be near the land; don't think it would show a want of seamanship. Suppose a man to be two or three miles to south'ard of the point, and within a mile and a half of the pier, don't think 'twould be proper to go so near the west shore and beach that he could not port his helm. A man may be a good seaman, and yet get into shoal water. A man would rely upon his own judgment, under the circumstances of the case. A course south-southwest, takes off the point for the light, don't know whether it would be the proper course; never have taken that bearing, that I recollect.

Vessels bound down the lake, from Chicago, on their true course, would not be found under the Racine Point; it would take them outside. When the wind was fair, south-southeast, a propeller would not naturally expect, in coming around the point, making Racine light, having rounded the point, to collide with a sailing vessel, which was bound down the lake, not touching at Racine.

The propeller would naturally make the vessel's light on her larboard bow, and would not expect a collision.

If she was rounding under soundings, hugging the shore, she would expect a vessel would go outside of her.

Supposing the red and white light, in the position stated in direct examination, was nearing the shore, so as to render it unsafe for the propeller bearing it to port her helm, if I was master of the vessel approaching her, and bound down the lake, I would put my helm down and let her luff; would port my helm.

The rule requiring sailing vessels to keep on their course, when a steam vessel approaches, would yield when the approaching vessel was in a position where she was not free to change her course. It is the duty, ordinarily, for a sailing vessel to keep on her course; but ninety-nine in a hundred would change their course to avoid a collision.

With propeller abreast of fore-rigging of the vessel, and being once or once and a half her length from the vessel, and her course south-southwest, and the vessel's north half east, the speed of vessel 6 or 7 knot an hour, and the propeller 4 or 5 miles an hour, if both should keep on this course, should think the vessel would shoot past her, and avoid a collision.

If the propeller was heading directly west, there might possibly be a collision. Should think in the case last supposed, the vessel would shoot past and avoid a collision. If the propeller was backing strong in that position, she would begin to slew, and keep slewing until she stopped, and the vessel might then pass by. If the propeller was abeam, and that distance off, and they kept on their course, it would still further diminish the chances of a collision.

If she was abeam 15 or 20 minutes off, and the vessel keeping on her course, she would have to chase her up to cause a collision.

Direct course of a vessel, from Chicago to Racine, would be north a little west. I have steered myself, I think, north by west from Chicago to Racine. It is altogether owing to the winds. Called sixty miles from Chicago to Racine, and from Racine to North Point betwixt 4 and 5 miles, and about 20 miles, maybe 21 miles from the point to Milwaukie; may be 22, called 25 miles from Milwaukie to Racine. The sailing course would be a variation of two miles from the direct course of 25 miles from Milwaukie to Racine. Counting in the variations of two miles, unless a man was well acquainted with South Milwaukie Point, would give the point a wide berth, or in foggy weather would do so. If I gave North Racine Point a wide berth, I would have to head the vessel in to land to make Racine Point.

Of the 27 miles between the places, including the variations, should think a man would lose one mile at South Milwaukie Point. Think it would be 22 miles of the sailing distance to North Racine Point, and from there to Racine.

Vessels bound down the lake to Milwaukie, Green Bay, and other ports, without intending to stop at Racine, sometimes go within from a half a mile to five or six miles from the point.

A vessel from Chicago, on a direct course down the lake, should think would be from 3 to 4 miles off of Racine Point, and might be further off.

The course of a steam vessel coming into Racine from Milwaukie should rather think would be inside of the usual track of vessels bound down the lake from Chicago to Green Bay, in a fair wind. If it was so thick, foggy, as not to see a vessel a length off north of the point, and south of the point clear as to see a vessel's light two or three miles off, the steamer might give the point so wide a berth as to be outside of the usual track of vessels going down the lake from Chicago to Green Bay. Should think a man would steer a straight on the propeller if he wanted to go to Racine in thick weather.

By libellant's Proctors.

With a five or six knot breeze with only a topsail on, should think the Nebraska would not sail over two miles an hour, and half full of water, half an hour before she would sink. Her speed would be diminishing as they took in her sail, and would not go as free partly filled with water as she would light.

CHARLES HARDING.

Wm. H. B. Warren, sworn on behalf of respondents, deposes:

Was inspector last year of the Chicago Maratime Insurance Company. Have been master of steam and sailing vessels. I did not inspect the Nebraska last year; saw her several times last year; don't know as I could form a correct opinion as to her value last year, unless I knew the condition of sails, &c.; might as to her hull.

If her sails were old she would not be worth so much, but if they were in a good condition last fall, her cash valuation might have been about $5000.

I saw the propeller Oriental after she came into Chicago last October; had occasion to pass her two or three times a day when they were repairing her, after her collision with the Nebraska. Her stem was started from the larboard to *to* starboard side; head ends of planks on starboard side were started off 4, 5, or 6 inches; several of her planks; don't know how many of them; did not count them.

Don't know value of damage; that place where she was injured was the most difficult place to repair about a boat.

Cross-Examination.

It is for the interest of insurance companies to have the value of vessels estimated as low as possible.

Vessels valued at $5000 and under are usually insured at two-thirds, and over that from 5 to 8; three-quarters, I think.

If a vessel was insured for $4500, it would show an estimate of her value of $6000, by insurance company I was acting for.

W. H. B. WARREN.

Benjamin F. Davidson, sworn on behalf of respondents.

I am inspector for board of underwriters; was last year; was acquainted with the Nebraska last season; did not survey the vessel. We have a survey of her on the books, made last year.

I saw her three or four times last season, but did not go into her to take a survey of her. Should think from her *her* age $4800 might have been her a fair valuation for her. She might have been worth from $4500 to $5000, in my judgment.

(Excepted to by libellants.) I based that valuation from the class the vessel is in, and from her age, as reported in the survey.

A new vessel, you may calculate, would diminish in value about 10 per cent. in a season.

We aim to put vessels for insurance at cash value. We sometimes get them a little too low, and sometimes get them too high; don't aim to get them wrong, but to get just their cash valuation.

It is customary for insurance companies to take three-quarters of value on vessel worth $5000 and over. It is about as Captain Warren stated in his examination.

I saw the Nebraska but two or three times last season, but did not take any particular survey of her.

Did nothing more than to look at outside appearance of vessel. Don't recollect whether any considerable repairs had been made on her last season. Don't recollect as regards that.

If she was insured in Northwestern Insurance Company last April for $4500, it might show a valuation of her, at that time, of $6000, by that company.

B. F. DAVIDSON.

And afterwards, to wit, on Tuesday, the tenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, in the March Term, A. D. 1857, of said District Court of the United States, for the Northern District of Illinois, at Chicago aforesaid, in the record of the proceedings of said Court, in said cause, the following decree and judgment was entered, to wit:

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL.
} Libel for collision.

The Court having fully considered, and being now fully advised upon the issue heretofore tried and submitted in this cause, finds the propeller in fault, and liable for the damages sustained by the libel-

lants, growing out of the collision alleged in the libel, in the sum of five thousand five hundred dollars. It is thereupon considered and adjudged by the Court, that the said defendant pay to the libellants in this cause, the said sum of five thousand five hundred dollars, their damages so found to be due as aforesaid, together with their costs to be taxed. And on motion of the libellants, by their proctors, it is further considered and adjudged by the Court, that a summary judgment be, and the same is accordingly hereby entered against the American Transportation Company as principal, and Charles H. Walker, the surety for eighteen thousand dollars, being the amount of the bond and stipulation given to the marshal on the arrest of the defendant, and that the libellants have execution therefor, to be discharged and satisfied upon the marshal making thereon the amount of the decree herein for damages, interest thereon, and costs.

And afterwards, to wit, on the third day of April, in the year last aforesaid, came the said respondents, and filed in said clerk's office their appeal bond in said cause, which is in the words and figures following, to wit:

Know all men by these presents, that we, the undersigned, the American Transportation Company, a corporation created by and existing under the laws of the State of New York, and John F. Stafford, of the County of Cook, and State of Illinois, are held and firmly bound unto John Volk and Horatio N. Turner, in the sum of eleven thousand four hundred and ninety dollars and seventy-eight cents, to be paid to the said John Volk and Horatio N. Turner, their executors, administrators, or assigns, for the payment of which sum, well and truly to be made, we do hereby bind ourselves, the said American Transportation Company, its successors and assigns, severally and jointly, firmly by these presents.

Sealed with the seal of the said American Transportation Company, and of the said Stafford, this 27th day of March, A. D. 1857.

Whereas, the said American Transportation Company has appealed to the Circuit Court of the United States, for the Northern District of Illinois, from a decree of the District Court of the United States, for said district, bearing date the 10th day of March, A. D. 1857, in a cause in which the said John Volk and Horatio N. Turner are libellants, and the said American Transportation Company was claimant of the propeller Oriental, and respondent.

Now, therefore, the condition of this obligation is such, that if the above-named appellant, the American Transportation Company, shall prosecute the said appeal with effect, and pay all damages and costs as shall be awarded against said appellant therein, then this obligation to be void, otherwise to remain in full force and effect.

For the American Transportation Company.

H. MILES, [SEAL.]
President.

JOHN F. STAFFORD. [SEAL.]

United States of America, Northern District of Illinois, *ss.*

John F. Stafford, being duly sworn, deposes and says, that he is a resident of the Northern District of Illinois, and that he owns property in said District, subject to execution, worth eleven thousand five hundred dollars, over and above all just debts and liabilities.

JOHN F. STAFFORD, [SEAL.]

Sworn to, and subscribed before me, this 27th day of March, A. D. 1857.

WM. H. BRADLEY,
Clerk.

Security approved, April 7th, 1857.

THOMAS DRUMMOND.

(Indorsed.) Filed April 3d, 1857.

WM. H. BRADLEY,
Clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, Clerk of the District Court of the United States for said Northern District of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record of all the proceedings, which have been had in said District Court of the United States, in said cause of John Volk and Horatio N. Turner against the propeller Oriental.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Chicago, in said District, this 22d day of April, A. D. 1857. [SEAL.]

WM. H. BRADLEY,
Clerk.

(Indorsed.) Filed April 22d, 1857.

WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on 9th day of July, of the July Term, A. D. 1857, of said Circuit Court, in the record of the proceedings thereof in said cause, is the following entry, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL.
} Libel on Appeal.

Now come the parties by their respective proctors, when this cause is set down for hearing, and argument upon the record filed herein, and after hearing the opening arguments of counsel, the hour of adjournment having arrived, the further arguments of counsel are postponed until to-morrow morning.

And afterwards, to wit, on the next day, to wit, the 10th day of

July, in said July Term, A. D. 1857, in the record of the proceedings of said Court in said cause, appears the following further entry, to wit.

Friday, July 10th, 1857.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL.
} Libel on Appeal.

Now come again the parties by their respective proctors, and after hearing their concluding arguments, the Court not being now sufficiently advised in the premises, take time to consider.

And afterwards, to wit, on the 19th day of September, as yet of the said July Term, A. D. 1857, of said Court, in the record of the proceedings thereof in said cause, appears the following entry, to wit.

JOHN VOLK and HORATIO N. TURNER
v.
The PROPELLER ORIENTAL.
} Appeal in Admiralty.

The Court having fully considered, and being now fully advised upon the issue heretofore submitted in this cause, order and adjudge that the decree of the District Court be in all things affirmed, with costs, and that the defendant pay to the libellants the sum of fifty-six hundred and seventy-three dollars and twenty-four cents, being the amount of the decree rendered in the said District Court, on the tenth day of March, A. D. 1857, exclusive of costs, with interest to date, and that the defendant also pay the costs taxed therein, and also the libellants costs, by them in this behalf expended to be taxed. And now, on motion of Messrs. Thompson and Larned, proctors for the libellants, it is considered by the Court that a summary judgment be, and the same is accordingly entered against the American Transportation Company, the principal, and John F. Stafford, the surety for eleven thousand four hundred and ninety dollars and seventy-eight cents, the amount of the bond and stipulation given to the libellants on the appeal from the decree of the District Court, and that the Marshal have execution therefor, to be discharged, and satisfied upon his making thereon the amount of the decree for damages herein, interest thereon, and costs; and the respondent, by his proctor, prays appeal to the Supreme Court.

And afterwards, to wit, on the 30th of September, A. D. 1857, the said respondents, by their proctor, filed in said Court, with the clerk thereof, his prayer for an appeal, in the words and figures following, to wit:

Supreme Court of the United States.

AMERICAN TRANSPORTATION COMPANY, claimant of the propeller Oriental, her tackle, &c., Appellant,
v.
JOHN VOLK and HORATIO N. TURNER, Appellees.

To the Supreme Court of the United States.

The petition of appeal of the above-named American Transportation Company respectfully shows that a decree was lately made in the Circuit Court of the United States for the Northern District of Illinois, bearing date the nineteenth day of September, A. D. 1857, in a certain cause of admiralty and maritime jurisdiction pending in the said Court, wherein the above named John Volk and Horatio N. Turner were libellants, and the above-named American Transportation Company was claimant and respondent, in and by which said decree it was ordered, adjudged, and decreed that the said American Transportation Company pay to the said John Volk and Horatio N. Turner the sum of fifty-six hundred and seventy-three dollars and twenty-five cents, being the amount of the decree rendered in said cause in the District Court for said district, on the tenth day of March, A.D. 1857, exclusive of costs, with interest to date, and that the said American Transportation Company pay all costs taxed therein, and do pay the libellants therein their costs expended in that behalf to be taxed, and that the said decree made by said District Court be in all things affirmed; which said decree of the said Circuit Court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore, this appellant respectfully prays that the said decree may be reversed, and that such other decree may be made by this Court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which he has lost by said decree, and this appellant as in duty bound will ever pray.

AMERICAN TRANSPORTATION COMPANY,
Per Hoyne, Miller, & Lewis.
HOYNE, MILLER, & LEWIS,
Proctors.

(Indorsed.) Filed Sept. 30th, 1857.
WM. H. BRADLEY,
Clerk.

And afterwards, to wit, on the same day, to wit, on the 30th day of September, A. D. 1857, the said respondents, by their proctors, filed in said Circuit Court with the clerk thereof, their certain letter of attorney, and also a certain writing obligatory, commonly called an appeal-bond, which said letter of attorney and appeal-bond are in the words and figures following, to wit:

Know all men by these presents, that the American Transportation Company has made, constituted, and appointed, and by these presents does make, constitute, and appoint Charles E. Chase, of Chicago, the true and lawful attorney of the said Company, for the said Company and its name, to make, execute and deliver any and all bonds, undertakings, and obligations he may see fit, in, or in relation to, or in relation to the appeal of any suit, action, or proceeding in which the said Company has any interest, or to which it is a party, or in relation to the bringing writ of error in any such suit, action, or proceeding, or to stay execution or proceeding upon any judgment or decree in any such suit, action, or proceeding, and particularly in the name of said Company, and as its attorney to make, execute, and deliver any bond, undertaking, or obligation he may see fit, in, or in relation to, or for the purpose of appealing a certain action lately pending in the Circuit Court of the United States (at Chicago), wherein the propeller Oriental, her tackle, &c., the said Company claimant was defendant, or for the purpose of staying execution or process upon any judgment or decree in said action, and to make, execute, and deliver any bond, undertaking, or obligation in the name of said Company in relation to appealing or bringing writ of error, or carrying up any action, judgment, or decree to the Supreme Court of the United States which he may see fit, and to procure for said Company surety or sureties to any bond, undertaking, or obligation herein mentioned, and the said Company does hereby ratify and confirm all its said attorney may lawfully do in the premises.

In witness whereof, the said Company has caused these presents to be subscribed by its President, and Secretary, and Treasurer, and the corporate seal of the said Company to be hereunto set, this 26th day of September, 1857.

FRANKLIN LEE, [SEAL.]
President.

JAMES C. EVANS, [SEAL.]
Secretary and Treasurer.

(Indorsed.) Filed Sept. 30th, 1857.

WM. H. BRADLEY,
Clerk.

Know all men by these presents, that we, the American Transportation Company, a corporation created by, and existing under the laws of the State of New York, and John F. Stafford, James R. Hugunin, are held and firmly bound unto John Volk and Horatio N. Turner, in the sum of twelve thousand dollars, to be paid to the said John Volk and Horatio N. Turner, their executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, firmly by these presents.

Dated this twenty-ninth day of September, in the year of our

Lord one thousand eight hundred and fifty-seven. Whereas, the above-bounden American Transportation Company has appealed to the Supreme Court of the United States, from a decree of the Circuit Court of the United States, for the Northern District of Illinois, bearing date the nineteenth day of September instant, in a cause taken by appeal to said Court, from the District Court of said district, wherein the said John Volk and Horatio N. Turner were libellants, and the said American Transportation Company was claimant of the propeller Oriental, her tackle, &c.

Now, therefore, the condition of this obligation is such, that if the above-named appellant, the American Transportation Company, shall prosecute their appeal with effect, and pay all such damages, costs, and expenses as shall be awarded against them, as such appellant therein, then this obligation to be void; otherwise to remain in full force and effect.

AMERICAN TRANSPORTATION COMPANY, [SEAL.]
Per Chas. E. Chase, their Attorney in fact.
JOHN F. STAFFORD, [SEAL.]
JAMES R. HUGUNIN. [SEAL.]

Approved.

THOMAS DRUMMOND.

Northern District of Illinois.

John F. Stafford, surety on the foregoing bond, being duly sworn, deposes and says, that he is a resident of the Northern District of Illinois, and that he owns property in said district, subject to execution, to the amount of twelve thousand dollars, over and above all his just debts and liabilities.

Sworn to, and subscribed before me, this 29th day of September, A. D. 1857.

WM. H. BRADLEY,
Clerk.

JOHN F. STAFFORD,
JAMES R. HUGUNIN.

Northern District of Illinois, *ss.*

James R. Hugunin, whose name appears subscribed to the annexed appeal-bond, in case of Volk & Turner v. Propeller Oriental, being by me duly sworn, deposes and says, that he is a resident of the Northern District of Illinois, is worth property, which is liable to execution in said district, to the amount of twelve thousand dollars, over and above all his just debts and liabilities.

Sworn to, and subscribed before me, this 1st day of Oct. A. D. 1857.

WM. H. BRADLEY,
Clerk.

JAMES R. HUGUNIN.

(Indorsed.) Filed Sept. 30th, 1857.

WM. H. BRADLEY,
Clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the foregoing transcript to be a true, full, and perfect copy from the record, of all the proceedings which have been had in said Court in said cause of John Volk and Horatio N. Turner, against the American Transportation Company, claimants of the propeller Oriental.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at my office, in Chicago, in said Northern District, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second year.

[SEAL.]

WILLIAM H. BRADLEY,
Clerk.

Northern Illinois, July Term, 1857.

The Propeller Oriental
v.
Volk and Turner.

Where a sail vessel and a propeller approach each other at night, and there is doubt as to the course of the sail vessel, it is the duty of the propeller to stop until the precise course of the sail vessel can be ascertained. In such case, it is not enough to excuse the propeller, that the light of the sail vessel was made on the larboard bow. If the larboard light of the propeller be displayed on the starboard bow of the sail vessel, it shows that they are running on converging lines, which must cross each other, and that there is danger of a collision.

And as this fact cannot be certainly ascertained on board the propeller, which is bound to avoid the sail vessel, it should stop its engine until the doubt can be solved.

A failure to do this, if a collision occurs, the propeller must be considered in fault.

Messrs. Hibbard and Messrs. Larned and

Opinion of the Court.

This is an appeal in Admiralty, from the decree of the District Court.

The claimant filed a libel against the steamboat or propeller Oriental, which alleged that the brig Nebraska was a vessel of more

than twenty tons burden, to wit, of two hundred and forty tons, was duly enrolled and employed in navigating the waters between different states and territories of the United States. That the brig was staunch and well manned, &c., sailed from the port of Chicago in ballast, on a voyage to Okonto, in Green Bay, in the State of Wisconsin.

That during the voyage, some time between nine and ten o'clock P.M., the 19th day of October, 1856, being then about three miles easterly from Racine, in the State of Wisconsin, the wind blowing moderately fresh from the south-southeast, and the course of the brig being then north half east, Allen Soper, master of the brig, who, with a watch on board, being on the lookout, descried lights to the starboard of the brig, and soon discovered that they were borne by a steamboat or propeller, approaching the brig in a northeasterly direction, about four miles distant, and then bearing about three points to the starboard of the brig; that as soon as the master of the brig discovered the approach of the steamer sufficiently near to apprehend danger, the master ordered the helm of the brig to be put to starboard, and immediately thereafter, the Oriental struck the brig stem on, aft the fore-rigging, on her starboard side; the propeller after the collision keeping on her way without rendering or offering to render any assistance; that the brig was immediately after the collision turned towards shore, where finally she sunk and became a total loss; that the crew of the brig used all proper efforts to keep her afloat. That with the assistance of the propeller she might have been saved. She sunk in Lake Michigan, about two miles south of Milwaukie harbor.

The brig carried a light suspended from her pallbits, and although there was a haze or slight fog on the water, the light could easily have been seen at the distance of two or three miles. That had the propeller kept a proper watch, the brig might easily have been avoided; that it was for want of care that the propeller collided with the brig.

The American Transportation Company, a corporation under the laws of New York, intervening for their interest in the propeller Oriental, answers as follows: That it has no knowledge of several of the articles of said libel, but answers as to the second, and says that on the 19th of October, 1846, the propeller being in good order, was proceeding on her voyage from Buffalo to Chicago, having stopped at Milwaukie to discharge freight; that she had a proper lookout and watch to guard against the danger of collision, and was furnished with suitable lights and was carrying the same, in accordance with the laws of Congress, and agreeably to the rules and regulations for steam vessels.

That at the time of the collision, the atmosphere was somewhat obscured by a fog, though the lights of said propeller could be seen at a distance of two and a half to three miles; that after the pro-

peller had passed Racine Point, which is about four miles north of Racine, and while she was on her course south-southwest, heading directly for the Racine lights, and making for the Racine piers, with the view of stopping and discharging a part of her cargo, the master of the propeller being then on her pilot-house, discovered the light of a vessel, which afterwards proved to be the brig Nebraska, to the eastward of said propeller, and three points on her larboard bow; and that said brig was passing down the lake with a clear wind, on the larboard side of said propeller; that at the time said light was discovered, the brig was from one to one and a half miles distant from the propeller, which was on the Racine side of the point, and about half a mile distant therefrom; and that from that time to the collision, the propeller had three men at her wheel; that her master and mates were on deck, together with a portion of her deck hands, and she continued as far in shore as possible, and was making directly for the Racine light, on a course south-southwest, and was running in three and one-half fathoms water, at a very slow rate, with her engine checked down.

The propeller continued on her course, and the brig was apparently passing down the lake on her larboard side; and it was not until the brig approached so near that her sails could be seen, that the master, or any one on board of the propeller, discovered that she was approaching too near; the propeller blew her whistle, and her engine was immediately reversed, and she commenced backing, to keep out of the way of the brig, which was then about thirty rods from the propeller; and if the brig had then put her helm aport, or kept on her course, she would have cleared the propeller, and there would have been no collision. At this time the wind was blowing strong south-southeast. And immediately after the whistle, by the negligence and unskilful management on the part of those navigating the brig, her course was immediately changed, directly across the bows of the propeller; and by the force of the wind, without any neglect or default of the propeller, the brig struck her larboard side against the stem of the propeller, knocking off her stem to about two feet under water, splitting open her bows, &c.

At the time of the collision, the propeller was so near the shore, and the water so shoal, that she could not port her helm. And this was the case from the time the brig was first discovered by those on board of the propeller. No complaint, it is alleged, was made by the brig that she was injured by the collision; and she continued her course down the lake, as shown by the wheelsman of the propeller, on the starboard side of that vessel. The propeller remained about ten minutes after the collision, before she moved towards Racine in a leaky condition, at which place her cargo was lightened and shifted, so as to enable her to continue her voyage to Chicago.

There are some facts in the case, about which there is little or no conflict. The wind was south-southeast, and at the time of the colli-

sion blew six knots an hour. The collision occurred at about quarter before ten in the evening, and that the brig sunk from one and a half to two miles south of Milwaukie. That the brig was struck on her starboard side, about five feet abaft of the fore-rigging, and she sunk from two and a half to three hours after the collision.

The place where the collision occurred, is a matter of controversy between the parties. The propeller insists, that it took place about one and a half miles north of Racine pier, about a half mile from shore. The brig contends it was from one to two miles north of Racine North Point, from three to four miles from the shore, and from five to seven from Racine pier. And to this error in the propeller, does the claimant attribute the collision. The course of a vessel from Milwaukie to Racine, intending to land at Racine, is after passing the North Point, turns westwardly to get inside the reef which extends some distance from the shore, and in crossing which, soundings must be taken for the safety of the vessel. And it is argued in behalf of the brig, that the propeller, supposing she had passed the North Point when she had not, naturally turned westerly, which brought her across the track of the brig. It will be observed that the localities of the respective places are several miles apart.

John Limb, an experienced seaman, at the time of the collision was second mate on board the brig. He says, they were four or five miles south of the point of Racine when his watch commenced on the starboard watch at eight o'clock, and were from three to four miles from the shore, the wind being south-southeast, about six to seven knots an hour. He says it was foggy at intervals, and smoky on the horizon. There was a bright light on the pallbits of the brig, which, at the time of the collision could be seen from two to three miles. He continued on deck until after the collision. No change was made in the course of the vessel; it was running north half east. It must have been nine o'clock, he says, when he passed Racine. At no time were we nearer than three and a half miles of the shore.

The witness saw the light of the propeller, and reported it to the captain, who was also on deck, who replied that he had seen it before. The light was northeast half north. It was over the starboard bow three points; he took the bearings from the weather compass. Witness knew it was a steamboat from her red lights before the collision.

The witness says, it was clear at the time we passed the point. I could see the land plain enough to prove to me that it was Racine Point, at the time we passed it. He was watching the man at the wheel every few minutes, and he says there was no change of the course from north half east.

Captain Soper of the brig was on deck from the time his vessel left Chicago until the collision, except while at supper. He has long been acquainted with the navigation of the lakes, and especially with the lake from Chicago to Green Bay, and he says the collision

occurred some one, two, or three miles north of the point; he saw the point when they passed it, and more distinctly than he saw Racine when they passed it.

Here are two witnesses, the master of the brig and his second mate, who swear that they saw the North Point in passing it, and that they were north of it one, two, or three miles. As the point projects into the lake, and it being some miles from Racine, at which there was a revolving light, they could not be mistaken in the facts sworn to. Passing the light in approaching the point, and seeing the land at both places, their evidence can only be rejected or disregarded, on the supposition that they combined to swear falsely.

Whilst the witnesses on board the propeller swear that they had passed the point, and had proceeded within two or three miles of Racine pier, they do not state that the land at the point was seen when passing it; but from the time they left Milwaukie, the progress of the propeller, the soundings, and from the noise of the surf on the beach, they infer that the point had been passed. The captain of the propeller says, "It was very thick, and we could not see anything at all, and the only way we could judge of the distance, &c., was by the soundings, the surf on the beach, and the length of time we had been running."

Collins, the first mate on the propeller, says, from the time they left Milwaukie, until the collision, he remained on deck; and that "before they got to the point it had been very hazy, but it began to clear away just as they passed it."

Horace Barber, who was on the propeller, and made the soundings, says: "When I was heaving the lead it was thick and smoky around the point. When it came off clear, we could see the shore, but this was after we saw the Racine light. We had been blowing the whistle all the way from Milwaukie until we saw the light."

The engineer of the propeller, Fitch, says, "We had been running at the usual rate, from two to two and a half miles an hour after leaving Milwaukie, and it had become very dark and thick, and the signal was given 'slow,' and in a few minutes 'very slow.'"

It is proved that the proper course of the propeller to make Racine port, from Milwaukie, on such a night as is described, would have been to come out of Milwaukie and steer south-southeast, and continue that course until the vessel had nearly run her time up for Racine North Point, and to approach it under soundings; and continue along the shore, under the point, until the Racine light was seen; that the course of a propeller, under such circumstances, would be south-southeast from Milwaukie South Point; and that she would change her course about four points to the westward in rounding the point. Captain McHenry says we can generally tell by the compass, within a short distance, and that he has never himself been mistaken in approaching the point. Barber, a witness on the pro-

peller, says her whistle was blown from the time they left Milwaukie until they saw the Racine light.

It appears the propeller was heavily ladened, and that there was a thick fog, so that the speed of the boat was greatly reduced. She left Milwaukie at half-after six in the evening. It took from ten to fifteen minutes to get out of port and around on the course. It may be presumed, that at about a quarter before seven, they were fairly under way. The usual speed of the propeller was from eight to nine miles an hour; suppose eight and a half miles an hour. The captain of the propeller took his position on the pilot-house at half-after eight. Barber, at the same time, was directed to get soundings. The boat was checked before the lead was thrown, so that the check must have been one-quarter before nine. The first check reduced the speed from 8½ or nine to four and a half miles the hour.

The second check, to go very slow, was given in about five minutes after the first one; and no order to increase the speed was given until from three to five minutes before the collision, which is shown to have occurred a quarter before ten. From one-quarter before nine to five minutes before the collision, the propeller was running under check. Under the double check the boat, as is shown, was running at from two and a half to three miles an hour. From quarter to nine to quarter to ten, the propeller was moving at about three miles an hour. If the propeller started at quarter to seven, and to quarter to nine is two hours, which she may have run 18 miles, and to which add one hour, at three miles, would show a speed of 21 miles. This, it is contended, would show the place of the propeller, when the collision occurred, at from one to two or three miles north of Racine Point.

These facts give not only plausibility but force to the argument of the appellees, that they have properly located the place of collision. And when to these facts the oaths of the master and first mate on board the brig, who swear that they had passed the point, as they not only saw the land on passing it, but that in passing the Racine pier, which is several miles from the point, they saw the light and the pier, the weight of the evidence is in favor of the position taken by the appellees.

Opposed to this conclusion is the inference by those on board the propeller, that from the time she had run after leaving Milwaukie, the soundings, the noise of the surges on the beach, and the short time the propeller was running to Racine, after the collision, it could not have occurred north of the point; and in addition, it is said, the revolving light of Racine was seen on board the propeller before the collision. It must be admitted that this theory is founded mainly upon inferences from supposed facts, in which the witnesses may be mistaken. And as to the light of the Racine pier, it is said that it may be seen some two or three miles north of the point, or possibly,

the light of the brig may have been mistaken for the pier light. Whilst the two witnesses on board the brig saw the land on passing Racine and also when they passed the point.

The lights of both vessels were seen in time to guard against a collision, had the proper means to avoid it been adopted.

Steel, the master, and Collins the mate of the propeller, state, when the brig's light was first made, it opened some two points on the larboard bow of the propeller. He says I watched the light closely, and it opened on us a little until I could see it shine on the head sails of the brig. Collins says he could not have shifted the helm of the propeller so as to avoid the collision, as they were then in shoal water, running to the land as close as we dare in about three fathoms water. If the helm had been ported, the propeller, he says, would have been thrown on the beach. If we had kept on our course, the brig would have struck us about midships a little abaft the beam. We could not starboard our helm and clear her. The propeller, he says, had stopped and backed, which changed her course some.

Steel says, as soon as he saw the brig keep away for us, he rung the bell to stop and back. As soon as he stopped and commenced backing it threw the propeller round, pointing her head to the shore. The brig came right down against us, her main boom struck abaft of our forward gangway; the end of her boom struck the propeller's yards and took off her flag-pole. The witness, as soon as the collision occurred, rung the bell to stop backing. The brig did not stop her headway entirely, but continued to go slowly around our bows, and went off down the lake. At the time the vessels collided, the propeller had nearly lost her headway.

When the second mate of the brig, who was on watch, saw the light of the propeller, it was over the starboard bow of the brig three points, the bearings being taken by him from the weather compass. He saw the red light of the approaching vessel, by which he knew it must be a steamboat. On announcing the light to the captain, who was also on watch, he replied that he had observed it. The witness watched the light of the propeller, and he says, she continued on her course until she got almost abeam of us, and then she seemed to steer directly for us. She bore down on the brig and struck it stem on.

When we made the hull of the propeller, she was about a length or a length and a half from us, on our starboard side, and this the witness thinks was too close for the vessel to get out of the way. The witness hailed the propeller and asked it to stop; there was no answer, and stem on she struck us. At this instant, the helm of the brig was put a starboard, which made the blow slanting, and consequently less injurious. The lead was heaved a few minutes after the collision, and from seven to ten fathoms of water was found.

Captain Soper, of the brig, says he was on deck when the collision took place, at from two to two and a half miles from the shore, per-

haps more. He says, I think I saw the lights of the propeller four miles off; the white light he saw about ten minutes before the red and green lights. The lights were from two to three points on our starboard bow. The brig kept on her course, and he observed the propeller was approaching. When she was from two to three times her length from us, she blew her whistle. She approached very near to us, when the witness ordered the steersman to put his helm hard a starboard. At this time, the propeller was, perhaps, the half or the whole of her length from us. The brig had not moved more than half a point when the propeller struck us. As soon as the brig cleared the propeller, the witness threw ten fathoms of the lead line and found no bottom. The brig, immediately after the collision, let in water so fast, that no possible exertion could keep her afloat until we could reach Milwaukie. She run about seventeen or eighteen miles from the place of collision.

George Robertson, a witness, was at the wheel of the brig at the time of the collision. He says it became so dark that he could not see to steer by the stars any longer; he looked over the bow of the brig and saw the light of the propeller, which was pretty near ahead of us. I was steering by the compass north half east, and kept my eyes on the light to see whether the brig swung. No alteration, he says, was made in the course of the brig until he was ordered to put the helm hard a starboard. The course of the propeller, he thinks, must have been changed to have caused the collision. We passed on the west side of her. When witness put the helm hard a starboard, the propeller was about two hundred yards from us.

The witnesses on the respective vessels, in this case, do not differ in stating the facts more than is usual in such cases. Entire accuracy in the statement of witnesses is scarcely to be expected in a collision case. The responsible persons are on board of the respective vessels, and a portion of them, who are experienced and believed to be competent, are generally on duty. These will naturally feel a strong bias in favor of their own skill and faithfulness. And when to this consideration is added the lives and property dependent upon their action, under imminent perils, which admit of scarcely a moment's deliberation, the high qualities fit to command in such a crisis will rarely be found.

Both vessels are charged with changing their course, which caused the collision. In this respect, the facts sworn to are as irreconcilable as the arguments of counsel founded on these facts. I have before remarked, that from the evidence and circumstances proved, the place of collision, as contended for by the libellant, is reasonably established. But the more important inquiry remains, which vessel, if either, was in fault?

There are some facts in the case established by the witnesses on both vessels, and which appear to me important. As the vessels approached each other, the larboard lights of the propeller were made

from two to three points on the starboard bow of the brig, and its light was displayed on the larboard side of the propeller. This demonstrates, it appears to me, the vessels were not on parallel lines, or the course named in the theory of each; but that they were running converging lines, which crossed each other; and whether there would be a collision or not, if the courses were continued, depended upon the distance and speed of each vessel from the places at which the lights were displayed to the place where the lines crossed each other, which would be the point of contact.

If the propeller were mistaken in supposing it had passed North Point, before it had reached it, it would be natural to conclude that she turned three or four points westerly, as is usual in that line of navigation. There is the highest probability that the witnesses are mistaken in saying that the place of collision was so near to the beach, that the propeller would have been thrown on it had she ported her helm to avoid the brig. From the soundings on the brig as soon as she got clear of the propeller by one witness, it appears that there was from seven to ten fathoms of water, and by another, that a line of ten fathoms was thrown without finding bottom.

It is a common rule of navigation that a steam vessel, being impelled by a controllable agency, shall avoid a sail vessel, the same as a vessel with the wind free shall avoid a vessel closehauled. There are exceptions to this rule, where there has been gross negligence on the part of the sail vessel, or the steamer could not give way without imminent peril. In this case, there is no such excuse. If the propeller could not certainly ascertain the course of the brig from its light, it should have stopped its engine in time to avoid a conflict.

If the larboard light of the propeller had been made on the larboard bow of the brig from two to three points, a collision could not have occurred without a change of the course of one or both vessels; but the propeller's larboard light was made on the starboard side of the brig, which showed immediate danger of a conflict. In approaching each other the vessels seemed to be once or twice on, or very near, the same line. This would necessarily be the case on running convergent courses, as they approached the point of contact. There was remissness then on the part of the propeller in not being assured of the exact course of the brig, to which, by the rule of navigation, it was bound to give way. Seeing that the brig's light was made on the larboard bow of the propeller, its officers concluded there was no danger, not supposing that the propeller's light was displayed some two or three points of the starboard bow of the brig.

As the vessels approached very near to each other, the helm of the brig was placed hard a starboard, and this is charged as the cause of the collision. But this, it is shown, did not change the course of the brig before the propeller struck her, more than from one to two points; and this seems to have been very properly done,

to give a glancing direction to the blow. At the time this order was given by the master of the brig, a collision was inevitable. The vessels were nearer each other than was supposed by the helmsman of the brig.

The propeller was not so near the shore, as stated by some of the witnesses on board of her; and there seems to have been no sufficient cause to excuse her for not running clear of the brig. In the crisis of a collision, more attention is paid to the lights displayed by the respective vessels, than to the course of the compass. The peril is imminent, and requires instantaneous action.

Where a sail vessel carelessly, or recklessly, attempts to cross the path of a steamer, and is struck by her, no relief is given for the injury done. But this is not justly or legally chargeable to the brig. Upon the whole, the decree of the District Court is affirmed, with costs.